5.11.70	Company's petition for review filed
5.14.70	Board's order further correcting Decision and order dated
6.18.70	Board's cross application for enforcement filed
4.26.71	The Decision of the Court of Appeals for the Second Circuit, filed
5.17.71	The Judgment of the Second Circuit, entered
7.12.71	The order of the Second Circuit amending judgment, issued
10.12.71	The orders of the Supreme Court granting certiorari, dated

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

DECISION AND ORDER

On June 4, 1968, Trial Examiner E. Don Wilson issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that the Respondent had not engaged in certain other unfair labor practices. Thereafter, the Respondent filed exceptions to the Decision and a supporting brief, and the Charging Party (herein referred to as the Union) and General Counsel filed briefs in support of the Trial Examiner's Decision.

On January 31, 1969, the National Labor Relations Board, having determined that the instant case raised issues of substantial importance in the administration of the National Labor Relations Act, as amended, ordered that this case be consolidated with three others[1] for the purpose of oral argument before the Board on March 12, 1969. The parties were given permission to file further briefs. Subsequently, on February 19, 1969, the

[1] *Travelodge Corp. et al.*, Case 21-CA-7694; *Hackney Iron & Steel Co.*, Cases 23-CA-2505, 23-CA-2554; *Kota Division of Dura Corporation*, 18-CA-2419.

Board extended the date of the oral argument to April 23, 1969.

The Board also invited certain interested parties to file briefs *amici curiae* and to participate in oral argument. Briefs were filed by: The Chamber of Commerce of the United States; American Federation of Labor and Congress of Industrial Organizations; International Union, United Automobile, Aerospace and Agricultural Implement Workers; The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America; and the National Federation of Independent Unions. The Chamber of Commerce of the United States, The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and the National Federation of Independent Unions did not choose to participate in the argument. The National Association of Manufacturers declined to either file a brief or participate in the argument.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, the oral arguments, Respondent's motions to reopen the record and the General Counsel's and Charging Party's opposition thereto, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

Briefly, the facts show that Wackenhut performed plant protection services for Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California. On March 8, 1967,[2] the Union was certified as exclusive bargaining representative for all of Wackenhut's full-time and regular part-time plant protection employees. On April 29, Wackenhut and the Union entered into a collective-bargaining agreement effective until April 28, 1970.

Pursuant to its agreement with Wackenhut, Lockheed let the service contract out for bids. On May 15, at a prebid conference attended by several general service contractors including the Respondent, Burns, Lockheed

[2] Hereinafter, all dates refer to 1967 unless otherwise stated.

advised the prospective bidders that Wackenhut's guards were represented by the Union which had a recent Board Certification, and that there was in existence a labor contract between Wackenhut and the Union covering these employees. On May 31, Wackenhut was informed by Lockheed that Respondent would perform the guard services as of July 1.

Prior to its July 1 takeover, Respondent interviewed guards for employment who were at that time employed by Wackenhut. As more fully described by the Trial Examiner, the Respondent assisted the American Federation of Guards in the solicitation of employees Elmer Reitzel, Thomas Ware, Charles Blenkemeier, Harris Camp, Stanley Ganiewski, and Walter Drake. On June 29, Respondent recognized the American Federation of Guards as bargaining representative.

On July 1, when Respondent officially began the guard service duties theretofore performed by Wackenhut, some 27 guards formerly worked at Lockheed in the employ of Wackenhut began work as guard employees of Respondent. In addition, 15 employees of Respondent were transferred from other jobs and began work at Lockheed. Thus, in assuming guard functions at Lockheed, a majority of Respondent's work force was made up of ex-Wackenhut employees, and the nature of the business remained the same.

On July 12, the Union, by letter, made a demand upon Respondent that it recognize the Union as bargaining representative and honor the Union's collective-bargaining agreement with Wackenhut. By letter dated July 24, the Respondent declined recognition. Unfair labor practice charges were then filed which resulted in the issuance of the complaint in the instant proceeding.

The Trial Examiner concluded that Respondent violated Section 8(a)(2) and (1) of the National Labor Relations Act, as amended, by assisting the American Federation of Guards in organizing employees, and by recognizing the American Federation of Guards when it did not represent an uncoerced majority of Respondent's employees. In addition, the Trial Examiner found that Respondent was a successor employer to Wacken-

hut and that it violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union as the bargaining representative of its employees. We agree with these findings of the Trial Examiner.

We also agree with the Trial Examiner that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to abide by the 1967 contract between Wackenhut and the Union. However, in view of the significance of the issue presented, we believe it is necessary to explicate fully our reasons for doing so.

The Supreme Court's Decision in *John Wiley & Sons v. Livingston*[3] altered the perspective in which a successor employer's obligations to honor the provisions of a collective-bargaining agreement negotiated by his predecessor must be viewed. There, the predecessor employer was absorbed by merger into a larger acquiring company (Wiley). Some of the predecessor's employees were represented by a union, and the collective-bargaining contract, which did not contain a successors clause, was not scheduled to expire until over a year after the merger took place. Pursuant to an arbitation clause in the contract, the union brought suit to compel Wiley to arbitrate its claim that certain contract rights had survived the merger. The Court held that even though the predecessor had disappeared as a result of the merger, all rights of the employees covered by the preexisting collective-bargaining agreement did not terminate. The Court determined that under the circumstances presented Wiley was bound to arbitrate its obligations under the preexisting collective-bargaining agreement.

In reaching its conclusion, the Court specifically rejected the contention that Wiley could not be required to arbitrate under the preexisting collective-bargaining agreement because it was not a party to that agreement and had not consented to be bound by it. The Court stated at 376 U.S., 550:

> While the principles of law governing ordinary contracts would not bind to a contract an unconsenting successor to a contracting party, (footnote

[3] 376 U.S. 543.

> omitted), a collective bargaining agreement is not an ordinary contract . . . '[I]t is a generalized code to govern a myriad of cases which the draftsmen cannot wholly anticipate . . . The collective bargaining agreement covers the whole employment relationship. It calls into being a new common law—the common law of a particular industry or of a particular plant.' (Citation omitted) . . . Central to the peculiar status and functions of a collective bargaining agreement is the fact dictated both by circumstances . . . and by the requirements of the National Labor Relations Act, that it is not in any real sense the simple product of a consensual relationship.

As the foregoing indicates, the Supreme Court refused to rely upon common law contract doctrine in determining the nature of a purchasing-employer's obligation to arbitrate matters arising under a contract it had not signed. Rather, the Court construed the contract in the context of a national labor policy which accords a central role to arbitration as "the substitute for industrial strife" and as "part and parcel of collective bargaining itself" and found the necessary contractual foundation for the duty to arbitrate in the contract negotiated by Wiley's predecessor:

> "Therefore, although the duty to arbitrate, as we have said . . . must be founded on a contract, the impressive policy considerations favoring arbitration are not wholly overborne by the fact that Wiley did not sign the contract being construed. This case cannot readily be assimilated to the category of those in which there is no contract whatever, or none which is reasonably related to the party sought to be obligated. There was a contract, and Interscience, Wiley's predecessor, was party to it. We thus find Wiley's obligation to arbitrate this dispute in the Interscience contract construed in the context of a national labor policy." (376 U.S. 551).

The concept of substantial continuity in the employing industry enunciated as a necessary condition for the

survival of the duty to arbitrate when the ownership of a business changes hands is at the heart of our determination that a purchasing employer is a successor-employer within the meaning of the Act. In essence, the finding of successorship involves a judgment that the employing industry has remained essentially the same despite the change in ownership.[4] A normal consequence of such finding is that the successor-employer is obligated to recognize and bargain with the union duly selected by the employees—albeit prior to the change in ownership—as their collective-bargaining representative. This consequence of successorship is rooted, *inter alia*, in the fact that

> "[i]t is the employing industry that is sought to be regulated and brought within the corrective and remedial provisions of the Act in the interest of industrial peace . . . . ,"[5]

as well as in the fact that, having chosen a bargaining representative,

> "[t]here is no reason to believe that the employees will change their attitudes merely because the identity of their employer has changed."[6]

Binding the successor-employer to his predecessor's bargaining obligation furthers the policy of protecting the employees' exercise of the right to engage in collective bargaining through representatives of their own choosing. Requiring the successor-employer to negotiate proposed changes in existing terms and conditions of employment with the employees' bargaining representative promotes stability in the employing enterprise's labor relations and furthers the interests of industrial peace. The obligation to bargain imposed on a successor-employer includes the negative injunction to refrain from unilaterally changing wages and other benefits established by a prior collective-bargaining agreement even though that agreement

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[4] See, eg., *Cruse Motors, Inc.*, 105 NLRB 242, 247.

[5] *Kiddie Kover Co.* v. *N.L.R.B.*, 105 F.2d 179, 188 (C.A. 6).

[6] *N.L.R.B.* v. *Albert Armato*, 199 F.2d 800, 803 (C.A. 7).

had expired.[7] In this respect, the successor-employer's obligations are the same as those imposed upon employers generally during the period between collective-bargaining agreements.[8]

The question before us thus narrows to whether the national labor policy embodied in the Act requires the successor-employer to take over and honor a collective-bargaining agreement negotiated on behalf of the employing enterprise by the predecessor. We hold that, absent unusual circumstances, the Act imposes such an obligation.

"The history of the collective bargaining process demonstrates that its object has long been an agreement between employer and employees as to wages, hours and working conditions evidenced by a signed contract or statement in writing, which serves both as recognition of the union with which the agreement has been reached and as a permanent memorial of its terms . . . . [t]he signed agreement has been regarded as the effective instrument of stabilizing labor relations and preventing, through collective bargaining, strikes and industrial strife." (*Heinz Co.* v. *N.L.R.B.*, 311 U.S. 514). In enacting the 1947 amendments to the Act, Congress added Section 8(d) in which it defined in some detail the duty to bargain collectively, including within that definition a specific ratification of the holding in the *Heinz* case.

Section 8(d) also defined the duty to bargain as meaning that, "where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce . . . no party to such contract shall terminate or modify such contract", unless it serves prescribed notices on the other party, and maintains its contract in effect for 60 days therefrom, even though that period may extend beyond the contract's natural termination

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[7] *Harold W. Hinson, d/b/a Hen House Market No. 3*, 175 NLRB No. 100, enforced, —— F.2d —— (C.A. 8) (1970). *Overnite Transportation Co.*, 157 NLRB 1185, enfd. 375 F.2d 765 (C.A. 4), cert. denied, 398 U.S. 838.

[8] *Marine & Shipbuilding Workers* v. *N.L.R.B.*, 320 F.2d 615 (C.A. 3).

or expiration date. Section 8(d) also provides that a party to a collective-bargaining agreement has the right to refrain from discussing modifications which are to take effect prior to the period fixed by the contract itself for reopening negotiations. Section 8(d) thus clearly demonstrates Congress' recognition of the paramount role in maintaining industrial peace played by parties' adherence to existing collective-bargaining agreements.

The impressive policy considerations favoring the maintenance and adherence to existing collective-bargaining agreements are not wholly overborne by the fact that Burns has not signed the contract here in issue. Nor can a holding that Burns is obligated to honor and adhere to the express terms of the contract readily be equated with compelling Burns to agree to a bargaining proposal or make a concession it is unwilling to make.[9] Indisputably, there is a contract. That contract covers the employees of the employing industry which Burns took over; it was negotiated on behalf of the employing enterprise by Wackenhut, Burns predecessor. That contract is reasonably related to Burns through its takeover of Wackenhut's Lockheed service functions and its hiring of Wackenhut employees. We find, therefore, that Burns is bound to that contract as if it were a signatory thereto, and that its failure to maintain the contract in effect is violative of Sections 8(d) and 8(a)(5) of the Act.[10]

In the normal case, we perceive no real inequity in requiring a "successor-employer" to take over his predecessor's collective-bargaining agreement, for he stands in the shoes of his predecessor. He can make whatever adjustments the acceptance of such obligation may dictate in his negotiations concerning the takeover of the business. Normally, employees cannot make a comparable adjustment. Their basic security is the collective-bargaining agreement negotiated on their behalf. In the

[9] Section 8(d) provides that performance of the mutual obligation to bargain does not compel either party to agree to a proposal or require the making of a concession.

[10] *C & S Industries, Inc.*, 158 NLRB 454; *N.L.R.B.* v. *Huttig Sash & Door Co.*, 377 F.2d 964 (C.A. 8), enforcing 154 NLRB 811. See also, *Oilfield Maintenance Co., Inc., etc.*, 142 NLRB 1384.

instant case this is certainly so. They work in an industry in which the identity of their employer is subject to annual bidding for the right to perform the services they are engaged in furnishing. The contract involved herein was negotiated for a term of 3 years, but had been in existence for only 2 months at the time of Burns' takeover. Burns had knowledge of the agreement when it bid for the Lockheed service contract. It hired employees on whose behalf the agreement was negotiated. Accordingly, in order to fully protect the employees' exercise of the right to bargain collectively and to promote the maintenance of stable bargaining relationships and concomitantly industrial peace in this industry, we conclude that Respondent Burns must be held bound to its predecessor's contract.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, The William J. Burns International Detective Agency, Inc., Ontario, California, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, with the qualification described below.[11]

Dated, Washington, D. C.

FRANK W. MCCULLOCH, Chairman

JOHN H. FANNING, Member

GERALD A. BROWN, Member
NATIONAL LABOR RELATIONS BOARD

[SEAL]

[11] Substitute "Judgment" for "Decree" wherever it occurs in footnote 6 of the Trial Examiner's Recommended Order.

Member Jenkins, dissenting:

My partial dissent is as follows:

There is no requirement in the Act that a successor employer be bound by the collective bargaining agreement in effect when the business is transferred. Whether to require the successor to be bound is therefore a matter of judgment or interpretation of the national labor policy. In the absence of a clear statutory command or binding judicial precedent, I would not impose the existing agreement on either the union or the employer.

Where the enterprise is marginal or faltering, the new management may have to rearrange the terms and conditions of employment if the business and the jobs are to survive. The union also may, as in the companion case of *Kota Division of Dura Corporation*, 182 NLRB No. 51, want the opportunity to alter employment conditions in the light of the new economic circumstances and relations brought into the situation by the new employer. In such cases, our goal should be to permit the parties flexibility in working out their new arrangements if either desires to do so, rather than to impose the existing agreement when one side may be seriously dissatisfied with it. The new employer is not a party to the agreement, and the union did not join in shaping and executing it with his circumstances in mind. Thus, to impose the agreement on the new relation may in many cases prove a source of friction and disruption, rather than the stability for which my colleagues hope.

Section 8(d) of the Act, in requiring "parties" to adhere to their agreements and give notice of termination well in advance, hardly supports the conclusion that the successor is bound by the agreement; for that section refers only to a "party" to the contract, the successor is not a party, and the issue before us is whether he should be treated as if he were a party.

Unlike my colleagues, who rely principally on *John Wiley and Sons* v. *Livingston* to require that the existing agreement must continue in effect beyond the transfer of the business, I see little in that case to support that conclusion. The employees' rights at issue there

were of a very narrow range, such as seniority, vacation pay, pension contributions and severance pay, rights which were fixed or already accrued by being, at least in part, earned through past performance of work, or "vested" as the Court referred to them. The Court held only that the arbitration clause in the old agreement survived the merger as an available method of resolving issues concerning these "vested" rights. This hardly amounts to a holding that the entire old agreement must be imposed on the new employment relation. Indeed, the Court's approval of arbitration and its inherent flexibility and adjustment to unforeseen circumstances might indicate that the old agreement should not be so imposed.

Accordingly, I would not hold that Burns is bound by the agreement between its predecessor, Wackenhut, and the Union.

Dated, Washington, D. C.

HOWARD JENKINS, JR., Member
NATIONAL LABOR RELATIONS BOARD

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
BRANCH OFFICE
SAN FRANCISCO, CALIFORNIA

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

Gerald Goldman and *Clifford L. Hardy, Esqs.*, of Los Angeles, Calif., for the General Counsel.

O'Melveny & Myers, by *Charles G. Bakaly, Jr.* and *Seymour Swerdlow, Esqs.*, of Los Angeles, Calif., for the Respondent.

Livingston, Gregory, Van Lopik & Higle, by *Gordon A. Gregory, Esq.*, of Detroit, Mich., for the Charging Party.

TRIAL EXAMINER'S DECISION

Statement of the Case

E. DON WILSON, Trial Examiner: The original charge was filed on July 24, 1967, by International Union, United Plant Guard Workers of America and its Amalgamated Local Union, No. 162, herein the Union, and an amended charge was filed on August 1, 1967. Upon the charge as amended, the General Counsel of the National Labor Relations Board, herein the Board, issued a complaint and notice of hearing dated October 25, 1967, alleging that The William J. Burns Interna-

tional Detective Agency, Inc., herein Respondent, had violated Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act, herein the Act.

Pursuant to due notice, a hearing in this matter was held before me in Los Angeles, California, on December 19 and 20, 1967. All parties but the party in interest fully participated. Briefs for the General Counsel, Respondent, and Charging Party have been received and considered.

Upon the entire record [1] in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Respondent's Business

At all material times, Respondent has been a New York corporation with offices in various parts of the United States, including an office at Los Angeles, California, where it is engaged in providing protective, guard, and detective services to business firms throughout the United States.

In the course and conduct of its business operations, Respondent's Los Angeles office has an annual volume of business in excess of $500,000, and annually performs services valued in excess of $50,000 for firms outside the State of California, and annually performs services valued in excess of $50,000 for firms in the Los Angeles area, each of which ships products valued in excess of $50,000 directly outside the State of California.

The Wackenhut Corporation, herein Wackenhut, is a Florida corporation engaged in plant protection and security services for firms located throughout the United States. In the course and conduct of its business operations, Wackenhut has an annual gross volume of business in excess of $500,000, and it annually performs services valued in excess of $50,000 outside Florida.

Respondent and Wackenhut, each, is and at all material times has been, an employer engaged in commerce within the meaning of the Act.

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[1] The motion to correct the transcript is granted as is the motion to admit Respondent's Exhibit No. 5 into evidence.

II. The Labor Organizations

The Union, and American Federation of Guards, Local 1, herein AFG, are labor organizations within the meaning of the Act.

III. The Unfair Labor Practices

A. *The Issues*

The issues include the following:

(1) Is Respondent a successor to Wackenhut;

(2) Is a unit limited to employees of Respondent at Lockheed, appropriate;

(3) Has Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and by refusing to give effect to a contract between Wackenhut and the Union;

(4) Has Respondent violated Section 8(a)(2) and (1) of the Act by recognizing AFG as the bargaining representative of Respondent's employees at Lockheed and by requiring membership in or an application for membership in AFG as a condition of employment at Lockheed;

(5) Did Respondent violate Section 8(a)(1) and (2) of the Act by promising and giving an employee a promotion and a raise because he assisted the AFG; and

(6) Did Respondent violate Section 8(a)(2) and (1) of the Act by assisting AFG in organizing Respondent's employees and by recognizing AFG when AFG did not represent an uncoerced majority of Respondent's employees?

B. *Respondent, Wackenhut and the Appropriate Unit*

At least beginning February 28, 1967,[2] Wackenhut performed plant protection services for Lockheed Aircraft Service Company, herein Lockheed, at Ontario International Airport. On this date, a majority of the employ-

[2] Hereinafter all dates refer to 1967 unless otherwise stated.

ees in the following unit selected the Union as their bargaining representative in a Board election. The unit is:

> All full-time and regular part-time employees of Wackenhut performing plant protection duties as determined in Section 9(b)(3) of the Act at Lockheed, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act.

On March 8, the Regional Director certified the Union as the exclusive bargaining representative of the employees in the above unit.

On April 29, Wackenhut entered into a collective-bargaining contract with the Union to be effective until April 28, 1970. It contained a legal union security provision.

As provided by the agreement between Lockheed and Wackenhut, Lockheed let the service contract out for bids. On May 15, Lockheed advised Respondent that Wackenhut's guards were represented by the Union which had a contract after Board certification. On May 31, Wackenhut was told by Lockheed that Respondent would perform the guard services as of July 1. Wackenhut ceased performing the guard services and Respondent began performing the guard services for Lockheed. On July 1, Respondent's employees included 27 guards formerly employed by Wackenhut and 15 transferred employees of Respondent.

C. *Respondent Assists the AFG*

1. Reitzel

Elmer H. Reitzel was formerly an employee of Wackenhut. He was "Chairman of the Board" of the Wackenhut employees. About June 2, Major George Goddard, a supervisor of Respondent, interviewed Reitzel and gave him a job application. A few days later, Reitzel spoke to Mr. New, Respondent's Operations Manager, and a supervisor, about the job. New told Reitzel to see

Jack Foley, an organizer for the AFG. Foley was seated from 15 to 30 feet away from New, in the same room. Foley gave Reitzel an AFG authorization card to sign and said employees had to belong to the AFG to work for Respondent, but Reitzel did not then sign it. Foley said Respondent couldn't live with the Union's contract. Reitzel asked for a copy of the AFG contract but did not get one. Foley told Reitzel that as steward he would like to have him get the employees to sign authorization cards for the AFG. Reitzel said he'd talk to the employees. Reitzel left and then called a representative of the Union in Detroit. Reitzel told the representative Respondent and AFG wanted the employees to sign authorization cards to keep their jobs. The representative said it was all right if it meant their jobs. Foley mailed pledge cards to Reitzel. About 2 days later, Foley came to Reitzel and spoke to him about the cards. I have carefully studied Reitzel's testimony and find it is confused as to dates. I am convinced that Reitzel just did not remember when Goddard told Reitzel Respondent was considering promoting him to sergeant. Foley asked Reitzel if he had gotten authorization cards, which Foley had given him, signed. Reitzel said he was working on them. In the latter part of June, Goddard phoned Reitzel and asked him to bring the signed pledge cards to Respondent's office. Reitzel failed to do so. About 10 o'clock that evening, Captain Kretzlow, a supervisor, came to Reitzel's home and asked for the signed AFG cards and Reitzel explained that he didn't have them with him. The next morning at work, Goddard came to Reitzel and picked up the AFG cards.[3]

When Respondent took over Wackenhut's operations, Reitzel was promoted from guard to sergeant with a raise from $1.75 to $1.95 an hour with no additional obligations. There is insufficient probative evidence that Reitzel was promised the promotion or was promoted to sergeant in violation of Section 8(a)(1) or (2) of the Act. Reitzel's recollection of when he was told he would be promoted to sergeant is too confused to permit a finding.

[3] The record makes clear there were about 18.

Respondent violated Section 8(a)(2) and (1) of the Act by New's direction to Reitzel to see Foley who as part of the hiring procedure told Reitzel he had to sign an AFG pledge card to work for Respondent and asked him to get other employees to sign for the AFG. Respondent similarly violated the Act by Goddard's request of Reitzel that he bring the signed AFG cards to Respondent's office and by Kretzlow's asking for the cards and by Goddard picking them up from Reitzel at work.

2. Thomas C. Ware

Ware was employed by Wackenhut as a guard. In early June, he went to Respondent's office wtih a filled out application for employment by Respondent. He gave his application to New. He told New he would like to know about pay and about hospitalization and other details. New directed him to Foley for answers. He saw Foley in the same room. Foley gave him no answers. Foley repeatedly pushed an AFG authorization card in front of Ware and told him the Union was out and that he had to sign the AFG card or not work for Respondent. Ware said that "in California" he had 30 days to make up his mind.

I find Respondent violated Section 8(a)(2) and (1) of the Act by New's assisting Foley in his solicitation for the AFG, of Ware.

3. Charles A. Blankemeier

On June 28, Blankemeier received an application for employment. The next day he returned the application when he went to Respondent's office to pick up a uniform. He saw Goddard and Kretzlow and asked for his uniform. As he was preparing to leave with his new uniform, Goddard told him he had to sign an AFG authorization slip before he could have Respondent's uniform. He signed the AFG slip with Foley's name on it and left with the uniform.

I find Respondent violated Section 8(a)(2) and (1) of the Act by conditioning his receipt of Respondent's uniform, necessary for work with respondent, on his signing an AFG authorization card.

4. Harris K. Camp

About June 10, Camp went to Respondent's office for an application. He saw Goddard. Goddard told him to go into the next room. Camp did so and found Foley to be the only one there. Foley told him Respondent now had the contract and if Camp wanted to work for Respondent he would have to sign the AFG card. Foley handed him a card and Camp said he would think it over. He left and again saw Goddard who gave him a work application. The next day Camp brought this application back to Goddard. He was measured for Respondent's uniform. A couple of weeks later, on June 30, he went in to pick up his uniform and on top of it was an AFG union slip that was supposed to be signed by him. In the presence of Goddard, Kretzlow gave him the AFG slip to sign. He said it had to be signed. It was in with the paper work for the clothing.

I find Respondent, through Goddard and Kretzlow, assisted the AFG in signing up Camp, in violation of Section 8(a)(2) and (1) of the Act.

5. Stanley L. Ganiewski

Ganiewski was a Wackenhut guard who went to Respondent's office for employment about June 10. He saw Goddard and asked where the applications were. Goddard pointed to a room. Ganiewski went there and found Foley there alone. Foley told him he'd have to join the AFG to work for Respondent. Foley spoke at length about the AFG and its contract. He asked Ganiewski to sign an AFG authorization card. The latter said he'd think about it and left.

I find Respondent, through Goddard, assisted the AFG in its solicitation of Ganiewski through Foley, in violation of Section 8(a)(2) and (1) of the Act.

6. Walter Drake

In the latter part of June, Drake went to Respondent's office and talked to Goddard and some captain. The captain brought to him an authorization card of the

AFG and said he would have to sign it before he could go to work. He said it was for "their union." Drake said he had 30 days to sign the card. They said he would have to sign it before he could go to work. Later that day, Goddard told him he had 30 days to sign but Respondent would like to have the AFG authorization signed before he went to work. Drake signed the card.

Respondent, through Goddard and the captain, assisted the AFG in its organizing activities in connection with Drake and thereby violated Section 8(a)(2) and (1) of the Act.

C. *Respondent is a Successor to Wackenhut and Obligated to Bargain With the Union*

When Respondent began its operations at Lockheed during the certification year, and during the contract term, it performed the same operations at Lockheed as had Wackenhut. It had in its employ a majority of Wackenhut's former employees. There has been a substantial continuity of Wackenhut's business operations by Respondent. At least substantially the same business facilities have been used. The working conditions are substantially the same. The services provided are substantially the same. Respondent's taking over Wackenhut's operations at Lockheed constituted no change in the "employing industry forming the appropriate bargaining unit for which the Union had been certified." *Maintenance, Incorporated*, 148 NLRB 1299. As in *Maintenance*, "Respondent commenced the performance of substantially the identical operations that had theretofore been performed by [Wackenhut], servicing the same facilities for the same customers in substantially the same manner and at the same work site, and utilizing for that purpose a former [Wackenhut] work force to perform the same functions and exercise the same skills."

Respondent had the duty to honor its employees' choice of a bargaining representative, the Union. This was a public obligation not arising from private contract. The Union "was entitled to statutory recognition at the time Respondent took over." *Maintenance, Incorporated, supra.*

It is clear "that Respondent assumed the obligation the Act imposes upon an employer to recognize and deal with its employees' majority representative when it selected as its work force the employees of the previous employer to perform the same tasks at the same place as they had in the past. These employees had already expressed their choice of bargaining representative, and continued to constitute an appropriate bargaining unit. As the certification year had not yet expired at the time the Union sought recognition and bargaining,[4] the presumption of the Union's continuing majority status applied and was not then vulnerable to attack." *Maintenance, Incorporated, supra.* Respondent was obligated to recognize and bargain with the Union as the statutory representative of its employees in an appropriate unit. Respondent violated Section 8(a)(5) and (1) of the Act by refusing to comply with the Union's July 12 demand for bargaining. It has been found that Respondent knew, when it bid for the Lockheed contract, that the Union was the certified bargaining representative.

Respondent challenges the appropriateness of the bargaining unit as applied to Wackenhut and as applied to Respondent. While a broader unit might have been appropriate, I find a unit of guards limited to a single facility is an appropriate unit. Here the certification was pursuant to a consent election agreement. There is no evidence that the Regional Director was arbitrary or capricious. A mere change of employers does not destroy the certification.

D. *Respondent Violated Section 8(a)(2) and (1) By Recognizing the AFG*

As has heretofore been found, the AFG did not represent an uncoerced majority of Respondent's employees on or before July 1, when Respondent recognized the AFG. Consequently, Respondent assisted AFG in violation of Section 8(a)(2) and (1) of the Act when it recognized the AFG as bargaining representative.

---

[4] July 12.

E. *Respondent Violated Section 8(a)(5) and (1) of the Act By not Honoring and Assuming and Doing Business Under the Contract Between the Union and Respondent's Predecessor, Wackenhut*

On April 29, the Union and Wackenhut entered into a collective-bargaining agreement covering Wackenhut's Lockheed employees, the contract to be effective until 1970.

While *Wiley* v. *Livingston*, 376 U.S. 543, dealt specifically only with the obligation of a successor employer to arbitrate under a contract with a union, the decision made clear that the rights of employees under a collective-bargaining agreement are not automatically terminated by the fact that one employer succeeds to the rights of another employer. The Court was concerned with whether, as here, the business remains the same. The Court recognized that employees do not ordinarily take part in negotiations, leading to changes in corporate ownership. The well being of employees is at best incidental to the negotiations. The Court held, "The objectives of national labor policy, reflected in established principles of federal law, require that the rightful prerogative of owners independently to rearrange their businesses and even eliminate themselves as employers be balanced by some protection to the employees from a sudden change in the employment relationship." The Court emphasized that a collective-bargaining agreement is not an ordinary contract.

The Union persuasively argues that in an industry of the nature here involved where the employer may be changed from year to year, the union contract should follow the unit rather than the employer. The employees may select a union which obtains a contract for their benefit and find the employer changes. If the new employer may ignore the contract, all negotiations for peaceful contractual relations come to naught. Here, if Respondent does not assume and honor the contract, economic stability is destroyed. To leave Respondent free to bargain from scratch and ignore the common law of the employing industry is to leave an industry such as this to contracts of no substance or meaning.

The *Wiley* reasoning has been applied in a situation very similar to the instant case. *Wackenhut Corporation* v. *International Union, United Plant Guard Workers of America*, 332 F.2d 954 (C.A. 9). There the court found that where, as here, there is a "substantial similarity of operation and continuity of identity of the business enterprise before and after the change in ownership," the successor employer is bound by the entire contract of the predecessor.

I find that Respondent by refusing to honor the contract between Wackenhut and the Union, refused to bargain in violation of Section 8(a)(5) and (1) of the Act since on or about July 24.[5]

IV. The Effect of the Unfair Labor Practices

The activities of Respondent set forth in section III, above, have a close, intimate, and substantial relation to trade, traffic and commerce among the several States, leading to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions of Law

Upon the foregoing findings of fact and the entire record in the case, I make the following conclusions of law:

1. Respondent and Wackenhut are employers engaged in commerce within the meaning of the Act.
2. AFG and the Union are labor organizations within the meaning of the Act.
3. All full-time and regular part-time employees of Respondent performing plant protection duties as determined in Section 9(b)(3) of the Act at Lockheed, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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[5] Cf. *Michaud Bus Lines, Inc.*, 171 NLRB No. 21.

4. By failing and refusing on July 24, and thereafter, to recognize and bargain with the Union as the exclusive bargaining representative of Respondent's employees in the above-described appropriate unit and by failing to honor and adopt and enforce the existing contract between Wackenhut and the Union, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

5. By assisting AFG in obtaining representation among its employees and by recognizing AFG as the exclusive bargaining representative of its employees at a time when AFG did not represent an uncoerced majority of Respondent's employees, Respondent engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (2) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in unfair labor practices violative of Section 8(a)(1), (2), and (5) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to withdraw and withhold recognition from AFG unless and until that union is certified, in order to enable its employees to exercise their statutory rights free from the unfair labor practices engaged in by Respondent.

It has been found that the Union is the certified bargaining representative of Respondent's employees in an appropriate unit and requested recognition and bargaining, the same being unlawfully refused, I shall recommend that Respondent bargain, upon request, with the Union and, if any understanding is reached, embody such understanding in a signed agreement. It has further been found that there is in existence a contract between Respondent, as successor to Wackenhut, and the

Union. I shall recommend that Respondent honor, adopt and enforce that contract. I shall also recommend that Respondent give retroactive effect to all the clauses of the contract and make whole, with 6 percent interest, employees for any losses suffered by reason of Respondent's refusal to adopt, honor and enforce the agreement.

RECOMMENDED ORDER

Upon the foregoing findings of fact and conclusions of law, and upon the entire record herein, it is recommended that Respondent, its agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively, upon request, with the Union as the exclusive bargaining representative of its employees in the above-described unit.

(b) Refusing to adopt, honor and enforce its contract with the Union, as successor of Wackenhut.

(c) Assisting or recognizing AFG as the representative of its employees for the purposes of collective bargaining, unless and until said labor organization shall have been certified as the exclusive bargaining representative of said employees in an appropriate unit.

(d) Interfering with representation of its employees through labor organizations of their own choosing.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to join or assist the Union or otherwise engage in activities protected by the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Withdraw and withhold recognition from AFG until or unless it is certified as bargaining representative of Respondent's employees in an appropriate unit.

(b) Bargain collectively, upon request, with the Union and, if any understanding is reached, embody such understanding in a signed agreement.

(c) Honor, adopt and enforce the contract between Respondent, as successor to Wackenhut, and the Union

and give retroactive effect to all the clauses of said contract, and, with interest of 6 percent, make whole its employees for any losses suffered by reason of Respondent's refusal to honor, adopt and enforce said contract.

(d) Post at its Lockheed, Ontario, California, operations copies of the notice attached hereto as "Appendix."[6] Copies of said notice, to be furnished by the Regional Director for Region 31, shall after being signed by Respondent's authorized representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

(e) Notify said Regional Director, in writing, within 20 days from the date of the receipt of this Recommended Order what steps Respondent has taken to comply herewith.[7]

Dated:

/s/ E. Don Wilson
E. DON WILSON
Trial Examiner

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[6] In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "THE RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

[7] In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the said Regional Director, in writing, within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO
THE RECOMMENDED ORDER OF A TRIAL
EXAMINER OF THE

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the
NATIONAL LABOR RELATIONS ACT
(AS AMENDED)

we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively, upon request, with International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162 as the exclusive bargaining representative of our employees in the following appropriate unit:

> All our full-time and regular part-time employees performing plant protection duties as determined by Section 9(b)(3) of the National Labor Relations Act, at Lockheed, Ontario International Airport; excluding office clerical employees, supervisors, and all other employees as defined in the Act.

WE WILL NOT refuse to adopt, honor and enforce our contract, as successor of Wackenhut, with the above-named Union and covering the above-described unit.

WE WILL NOT assist or recognize American Federation of Guards, Local 1, as the representative of our employees for the purposes of collective bargaining, unless and until it shall have been certified as the exclusive bargaining representative of our employees in the above unit.

WE WILL NOT interfere with representation of our employees through labor organizations of their own choosing.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights to join or assist the United Plant Guard Workers or otherwise engage in activities protected by the Act.

WE WILL withdraw and withhold recognition from American Federation of Guards until or unless it is certified as bargaining representative of our employees in an appropriate unit.

WE WILL bargain, upon request, with United Plant Guard Workers and, if any understanding is reached, embody such understanding in a signed agreement.

WE WILL, as successor to Wackenhut, honor, adopt and enforce our collective-bargaining contract with United Plant Guard Workers and give retroactive effect to all clauses of said contract and, with interest at 6 percent, make whole our employees for any losses suffered by reason of our refusal to honor, adopt and enforce said contract.

THE WILLIAM J. BURNS
INTERNATIONAL DETECTIVE
AGENCY, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 10th Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California, 90014, Telephone No. 688-5850.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

Case No. 31-CA-776

In the Matter of the
WILLIAM J. BURNS INTERNATIONAL
DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARDS
WORKERS OF AMERICA AND ITS AMALGAMATED
LOCAL NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1,
PARTY IN INTEREST

MOTION TO REOPEN RECORD

Pursuant to Section 102.48(d) of the Rules and Regulations and Statements of Procedure of the National Labor Relations Board, Respondent, William J. Burns International Detective Agency, Inc., by its counsel, respectfully moves that the record in this matter be reopened for the purpose of admitting additional evidence. In support thereof, counsel for the Respondent, shows as follows:

1. On December 18, 1967, the Respondent, Counsel for the General Counsel, and the charging party, United Plant Guard Workers of America, entered into a stipulation which was entered in evidence as General Counsel Exhibit No. 3 before the Trial Examiner.

Paragraph 8 of said stipulation provides as follows:

> "On July 1, 1967, when Respondent officially began guard service, some twenty-seven (27) guards formerly working at Lockheed Aircraft Service Company, Ontario International Airport, Ontario, Cali-

fornia, in the employ of the Wackenhut Corporation began working as guard employees of Burns; and, concurrently, fifteen (15) employees of Burns, who were transferred from other Burns jobs, also began working at Lockheed. At present Respondent employs twenty-one (21) former Wackenhut employees, twenty-three (23) Burns employees who were transferred from other Burns jobs, and eight (8) new hires."

2. Briefly stated, the evidence that Respondent seeks to place in the record is as follows:

On December 31, 1968, Respondent employed, at Lockheed Aircraft Service Company, thirteen (13) former Wackenhut employees, thirty-two (32) of Respondent's employees who were transferred from other jobs of the Respondent, and four (4) new hires. (Of the thirteen (13) former Wackenhut employees employed on December 31, 1968, only nine (9) worked on a full time basis.)

3. The facts set forth in paragraph 2 above, which have changed since the date of the stipulation of December 18, 1967, are highly relevant to the following contentions of the Respondent;

(a) Respondent is not successor to Wackenhut because there has been no continuity of the employing industry;

(b) There has been a failure to prove the factors necessary to establish successorship;

(c) It would be improper, in view of the high degree of turnover and the fact that such a small percentage of former Wackenhut employees are still employed by the Respondent, to order Respondent to recognize, without an election, the United Plant Guard Workers as the exclusive bargaining representative for its employees;

(d) Respondent is not bound by the collective bargaining agreement between Wackenhut and the United Plant Guard Workers;

(e) A bargaining unit consisting of only Respondent's employees at Lockheed is not appropriate; and

(f) The other contentions set forth in Respondent's Brief in support of Exceptions to the Trial Examiner's Decision.

WHEREFORE, Respondent requests the National Labor Relations Board reopen the record in the instant matter for the purpose of admitting additional evidence.

Respectfully submitted

O'MELVENY & MYERS
SEYMOUR SWERDLOW

By /s/ Seymour Swerdlow
SEYMOUR SWERDLOW
Attorneys for Respondent

Dated: January 9, 1969.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D. C.

Case No. 31-CA-776

In the Matter of The
WILLIAM J. BURNS INTERNATIONAL
DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARDS
WORKERS OF AMERICA AND ITS AMALGAMATED
LOCAL NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1,
PARTY IN INTEREST

MOTION TO REOPEN RECORD

Pursuant to Section 102.48(d) of the Rules and Regulations and Statements of Procedure of the National Labor Relations Board, Respondent, The William J. Burns International Detective Agency, Inc., by its counsel, respectfully moves that the record in this matter be reopened for the purpose of admitting additional evidence. In support thereof, counsel for the Respondent, shows as follows:

1. On December 18, 1967, the Respondent, Counsel for the General Counsel, and the charging party, United Plant Guard Workers of America, entered into a stipulation which was entered in evidence as General Counsel Exhibit No. 3 before the Trial Examiner.

Paragraph 8 of said stipulation provides as follows:

> "On July 1, 1967, when Respondent officially began guard service, some twenty-seven (27) guards formerly working at Lockheed Aircraft Service Company, Ontario International Airport, Ontario, Cali-

fornia, in the employ of the Wackenhut Corporation began working as guard employees of Burns; and, concurrently, fifteen (15) employees of Burns, who were transferred from other Burns jobs, also began working at Lockheed. At present Respondent employs twenty-one (21) former Wackenhut employees, twenty-three (23) Burns employees who were transferred from other Burns jobs, and eight (8) new hires."

2. Briefly stated, the evidence that Respondent seeks to place in the record is as follows:

On October 31, 1969, Respondent employed, at Lockheed Aircraft Service Company, nine (9) former Wackenhut employees, eighteen (18) of Respondent's employees who were transferred from other jobs of the Respondent, and two (2) new hires. (Of the nine (9) former Wackenhut employees employed on October 31, 1969, only seven (7) worked on a full time basis.)

3. The facts set forth in paragraph 2 above, which have changed since the date of the stipulation of December 18, 1967, are highly relevant to the following contentions of the Respondent;

(a) Respondent is not successor to Wackenhut because there has been no continuity of the employing industry;

(b) There has been a failure to prove the factors necessary to establish successorship;

(c) It would be improper, in view of the high degree of turnover and the fact that such a small percentage of former Wackenhut employees are still employed by the Respondent, to order Respondent to recognize, without an election, the United Plant Guard Workers as the exclusive bargaining representative for its employees; or to honor the collective bargaining agreement between the United Plant Guard Workers and Wackenhut;

(d) Respondent is not bound by the collective bargaining agreement between Wackenhut and the United Plant Guard Workers;

(e) A bargaining unit consisting of only Respondent's employees at Lockheed is not appropriate; and

(f) The other contentions set forth in Respondent's Brief in support of Exceptions to the Trial Examiner's Decision.

WHEREFORE, Respondent requests the National Labor Relations Board reopen the record in the instant matter for the purpose of admitting additional evidence.

Respectfully submitted

O'MELVENY & MYERS
SEYMOUR SWERDLOW

By /s/ Seymour Swerdlow
SEYMOUR SWERDLOW
Attorneys for Respondent

DATED: November 19, 1969.

[Tr. p. 1.] BEFORE THE
NATIONAL LABOR RELATIONS BOARD
THIRTY-FIRST REGION

Case No. 31-CA-776

IN THE MATTER OF
THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC., RESPONDENT

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162, CHARGING PARTY,

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

Hearing Room #1
215 West Seventh St., 9th Floor,
Los Angeles, California
December 19, 1967

The above-entitled matter came on for hearing, pursuant to notice, at 10:30 o'clock, a.m.

BEFORE: E. DON WILSON, ESQ., Trial Examiner.

APPEARANCES:

GERALD GOLDMAN, ESQ., CLIFFORD L. HARDY, ESQ., 215 West 7th St., Los Angeles, California, appearing on behalf of the General Counsel.

LIVINGSTON, GREGORY, VAN LOPIK & HIGLE, By: GORDON A. GREGORY, ESQ., 2140-2144 First National Bldg., Detroit, Michigan, appearing on behalf of the Charging Party.

O'MELVENY & MYERS, By: CHARLES G. BAKALY, JR., ESQ., and SEYMOUR SWERDLOW, ESQ., 433 S. Spring Street, Los Angeles, California, appearing on behalf of the Respondent.

[Tr. p. 3.] PROCEEDINGS

[Tr. p. 4.] [By Mr. Goldman] I have had marked as General Counsel's Exhibit No. 1 the formal papers in this proceeding, and all parties have had an opportunity to examine them, and I hereby offer into evidence [Tr. p. 5.] General Counsel's Exhibit No. 1, formal documents.

TRIAL EXAMINER: Any objection?

MR. GREGORY: No objection.

MR. SWERDLOW: No objection.

TRIAL EXAMINER: Without objection, General Counsel's Exhibit No. 1(a) through (r) for identification is received in evidence.

(The above-referred to documents were marked General Counsel's Exhibits No. 1(a) through 1(r) for identification, and were received in evidence.)

[Tr. p. 10.] MR. SWERDLOW: Well, I do want to be heard. One thing that is not in stipulation which parties are prepared to stipulate on, and I would like to offer the following stipulation. That is, that, one, the election between Wackenhut and the United Plant Guard Workers was held pursuant to stipulation agreement which went into the appropriateness of the bargaining unit. I would like to further stipulate that after the election was conducted that there were no objections to the election and the union was certified on the basis of the tally of ballots. There never has been any hearing on the appropriateness of the unit.

[Tr. p. 11.] TRIAL EXAMINER: I assume that you will so stipulate?

MR. GOLDMAN: Yes, I will.

TRIAL EXAMINER: Do you so stipulate?

MR. GREGORY: Yes, sir.

TRIAL EXAMINER: The stipulation is accepted. However, this was certification based upon a stipulation—

MR. SWERDLOW: Now, I would like to make a brief opening statement, please.

TRIAL EXAMINER: Please do so.

MR. SWERDLOW: I think that you probably have a good, sufficient grasp of the facts, what happened. I will

tell you what we are going to urge. First, we are going to urge that the underlying certification of the Wackenhut unit was improper and that the unit at Wackenhut was not an appropriate bargaining unit and that certification has no force and effect. Second, we are going to urge and prove that the Lockheed operation in which guard services are performed, to which this hearing is related, is not an appropriate unit with respect to Burns' operation. Burns has a large—Burns, that is, the Respondent, has a large operation in this area, which the Lockheed facility forms a small part of, and the only appropriate unit that Burns can be ordered to bargain in is a unit that includes all of its operations in this area. If this was an initial "R" case, we would urge that the unit at Lockheed was inappropriate, and we will demonstrate it. [Tr. p. 12.] At this point, our argument is similar to the accretion cases.

TRIAL EXAMINER: To what is it similar?

MR. SWERDLOW: Accretion cases. A small plant and an addition was made to the plant or added on a different facility and now it becomes a party of the original bargaining unit.

So, based on those two arguments, we will urge that Burns not be ordered to bargain with the United Plant Guard Workers of America.

Secondly, there is no existing case that I could find, and I believe there is none, where employer who is a successor has ever been found to be bound by a pre-existing contract of the predecessor. I think that new law is attempted to be made here, and this attempt should be turned back as entirely contrary to the policy of the Act. At any rate, we should not be required and cannot be required to honor a contract between Wackenhut and Burns. As far as the specific allegations are concerned, we will be able to prove they were not true. If there was anything, it is not of a nature that constitutes an unlawful act.

TRIAL EXAMINER: Mr. Goldman.

MR. GOLDMAN: Yes, sir.

TRIAL EXAMINER: You do take the position, do you not, the refusal by the William J. Burns International Detective Agency to recognize and enforce the con-

tract between the Charging Party and Wackenhut is in itself improper; is this [Tr. p.13.] the position you take?

MR. GOLDMAN: Yes.

TRIAL EXAMINER: Are there cases that so hold?

MR. GOLDMAN: I haven't found any, except for, I believe, Wackenhut's Case in the 9th Circuit, which, I believe, said something to the effect that monitoring contracts—

TRIAL EXAMINER: What it said—

MR. SWERDLOW: That Wackenhut case was not an NLRB case. It was a case between two private parties, and actually involved arbitration under a collective bargaining agreement. It was based on the Wiley Case of the Supreme Court, where there was a similar issue before the court, which said that the successor was required to arbitrate under the predecessor's contract, and that's all that that case does.

I would like to address myself to Mr. Goldman's statement that he objects to any information concerning Wackenhut's certification. We have an absolute right to look at that certification. We were never a party to certification. There was never a hearing on the bargaining unit, and to disallow evidence on that issue is clearly wrong and deprives us of our rights to a full hearing at this stage of the proceeding.

[Tr. p. 15.] MR. GOLDMAN: Yes, we have two stipulations marked as General Counsel's Exhibits No. 2 and 3, marked for identification, and I offer them in evidence.

TRIAL EXAMINER: You are offering them into evidence?

MR. GOLDMAN: Offering them into evidence.

TRIAL EXAMINER: Any objections?

MR. SWERDLOW: No.

TRIAL EXAMINER: Without objections, General Counsel's Exhibits No. 2 and 3 are received in evidence.

(The above-referred to documents were marked General Counsel's Exhibit No. 2 and 3 for identification and were received in evidence.)

ELMER H. REITZEL

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Goldman) Mr. Reitzel, were you employed by Wackenhut Corporation?
[Tr. p. 16.] A I was, sir.
Q During what period of time did you work for Wackenhut?
A From September until the termination of their contract.
Q When was that?
A In July.
Q What type of work were you hired for?
A As guard.
Q Plant guard?
A Plant guard.
Q On or about June 2, 1967, did you have the occasion of being interviewed about going on Burns' payroll?
A I was.
Q Who interviewed you?
A Major Goddard.
Q (By Mr. Goldman) What occurred when you met with Mr. Goddard?
A He gave me an application and took the size for my uniform.
[Tr. p. 17.] Q (By Mr. Goldman) What did you do with the application?
A I returned it to their office?
Q When?
A Oh, approximately two days later.
Q Had you or had you not filled it out?
A I had filled it out.
Q Did you have a conversation?
A No, I didn't.
Q What occurred when you returned your application to Major Goddard?

A Well, there wasn't anything at that particular time, as I remember.

Q Did you ever have a conversation with anyone from the Burns' L. A. office?

A Mr. New.

[Tr. p. 18.] Q (By Mr. Goldman) When did you have this conversation with Mr. New?

A Oh, approximately three or four days later after I filled out my application.

Q After you filled out your application. Where did this conversation take place?

A At Ontario Airport office.

Q Where is this airport office?

A In Ontario, the terminal building.

Q At the terminal building. You say you had a conversation; then what occurred?

A Well, he just told me to go across the table and see the gentleman over there.

Q Did that gentleman identify himself to you?

A He was Mr. Foley.

Q At this time when Mr. Foley identified himself to you, did Mr. New stay in the room?

A He did.

[Tr. p. 19.] Q Did you have a conversation with Mr. Foley?

A I did.

Q What was said?

A He gave me one of his pledge cards to sign, and I didn't sign it at that particular time. I asked him if I could see the new contract he has. He said he only had one. I told him I didn't want to sign the pledge card at that particular time.

Q Did he say anything else to you?

A Well, he understood I was chairman of the board of our union, and he said he would like to have the boys sign those pledge cards.

Q Did you say something to him?

A I said to him, "I will go back and talk to them."

Q Did he say anything after you told him you were going to go back and talk to the boys?

A No, he didn't that particular time.

TRIAL EXAMINER: Who is Mr. New?

THE WITNESS: He was supposed to be the assistant manager.

TRIAL EXAMINER: Of what, Lockheed?

THE WITNESS: No, of Burns.

TRIAL EXAMINER: Burns. Who is Mr. Foley?

THE WITNESS: Foley was representative of the American Federation of Guards union.

Q (By Mr. Goldman) After your conversation with Mr. Foley, [Tr. p. 20.] did you have occasion to contact anyone from United Plant Guard Workers of America?

THE WITNESS: Yes, I talked to a representative from our union.

Q (By Mr. Goldman) What did you tell him?

TRIAL EXAMINER: Who was it, when was it, where was it, who else was present?

THE WITNESS: John Gillman who was in Detroit at the time; I talked to him by phone.

THE WITNESS: In June.

Q (By Mr. Goldman) Was this after your conversation with Foley?

A That's right, after Foley.

Q Then what did you talk about—

MR. SWERDLOW: Object, when did he talk to him.

MR. GOLDMAN: Well, I believe the record will show he said this was approximately three days after he signed his application.

TRIAL EXAMINER: That's when he spoke to New. All we have is this conversation with somebody in Detroit or wherever [Tr. p. 21.] it is, he said it took place sometime after that conversation with New, sometime in June. But about how long after your conversation with New—

THE WITNESS: About three or four days later.

TRIAL EXAMINER: All right.

Q (By Mr. Goldman) What did you tell Gillman?

A I told Gillman that they wanted us to sign pledge cards and in order to work there we had to do that, and he instructed me to say that it's O.K. for them to sign them, if it's going to mean your job, you'll keep your job.

Q Now, after this conversation with Mr. Gillman, did you call Jack Foley?

A I talked to Jack Foley and I told him again that he could not get into the compound and into Lockheed, that I would take these pledge cards and have them signed for him and return them to him.

Q (By Mr. Goldman) How long after you talked with Foley was it that you talked with Gillman?

A Oh, two days later.

Q And where was Gillman?

A He was in Detroit at the time I talked to him.

[Tr. p. 22.] TRIAL EXAMINER: He's already been through that conversation; now it's the next conversation that he had again with Foley, I believe it was, when that took place.

Q (By Mr. Goldman) Now, after your phone call with Gillman, approximately when did you call Foley?

A I don't recall. He came to me. About two days later.

Q About two days later?

A Yes.

Q Now subsequent to the time you spoke to Foley about the pledge cards, but prior to receiving them, did you have occasion to call Burns' office at the terminal?

A No, I didn't call Burns' office.

Q Did they call you?

A Major Goddard called me at the gate where I was working.

Q This is approximately how long after you spoke with Foley?

A A day or so after.

Q What did Goddard say to you?

A Goddard said they were contemplating on promoting me to a sergeant, and I told him if he felt I was qualified for it, I would appreciate it.

TRIAL EXAMINER: Did he say anything about cards at that time?

THE WITNESS: No, Major Goddard never spoke to me about the union at all.

TRIAL EXAMINER: Have you been promoted?

[Tr. p. 23.] THE WITNESS: I have, sir.

Q (By Mr. Goldman) Later that day, after your conversation with—

TRIAL EXAMINER: Major Goddard.

Q —Major Goddard, did you receive a phone call from Foley?

A Yes, I did.

Q What did he say?

A He told me that he had talked to Mr. Ingles into promoting me to a first sergeant.

Q (By Mr. Goldman) Did Mr. Foley mention anything to you about pledge cards at that time?

A He asked me if I had them signed. I told him I was working on them at that particular time to get them signed.

[Tr. p. 25.] Q (By Mr. Goldman) During the latter part of June, did you receive a phone call from Major Goddard?

A I did.

Q Could you approximate the date.

A No, I couldn't say.

Q What did Major Goddard say to you?

A He wanted me to bring the pledge cards I had signed to the Airport Office.

Q And what was your reply?

A I told him I was going to my grandson's birthday party and I would bring them down later.

Q Did he say anything else to you?

A He said he would be there at seven o'clock, and that's the latest.

Q (By Mr. Goldman) Did you receive a visitor at your home later that evening?

A I did.

Q What was the purpose of the visitor?

A Well, it was at ten o'clock in the evening approximately that he came to pick up these pledge cards.

[Tr. p. 26.] Q (By Mr. Goldman) Who was this visitor?

A He was an officer from Burns. At that particular time, I didn't know what his name was.

Q Well, have you found out since then who he is?

A His name is Kretzlow.

Q Did you have a conversation with Mr. Kretzlow?

A I did. He said he wanted to pick up the pledge cards, but I told him that I didn't have them with me, I had left them down at my daughter's, I had forgot and left them there.

Q Did you say something else to Mr. Kretzlow?

A I told him I would have them in the morning if they could pick them up in the morning.

Q The next morning, were you visited by someone?

A I was visited by Major Goddard. He came over and picked up the pledge cards.

Q Did you have a conversation with Major Goddard at that time?

[Tr. p. 27.] A No, I told him at that particular time that I was sorry, that I didn't have them down there with me, I told him what the circumstances were, and that was all the conversation.

Q While you were working for Wackenhut, what was your duty post?

A I was a guard at the area at the main gate.

Q Now you are a sergeant with Burns, what is your duty post?

A I am still a guard on the post, but not on the main gate. I'm over in Area 1.

Q Area 1. Since you've been—

TRIAL EXAMINER: Does a sergeant make more money?

THE WITNESS: He does, sir.

Q (By Mr. Goldman) What is the difference in the rate of pay between an officer and a sergeant?

A The different in the rate of pay, regular guard is $1.75, I receive $1.95.

Q Compared to your obligations as a guard under the Wackenhut agreement, have you taken on any more obligations as a sergeant under the Burns' contract.

A None whatsoever.

[Tr. p. 30.] DIRECT EXAMINATION

Q (By Mr. Gregory) Mr. Reitzel, you testified with respect to a conversation with Mr. New at the Airport

Office several days after your earlier conversation with Major Goddard; is that your best recollection of your testimony?

A Yes.

Q How were you advised to go to the Airport office on that particular day?

A We were advised to go there by Captain Bagby after we filed our applications, to go there and talk to Mr. New.

Q Did you proceed to the office alone or were you accompanied by another?

[Tr. p. 31.] A No, I went to the office myself.

Q Upon arriving at the office, what was the first thing that you observed?

A I went into this conference room and Mr. New was addressing one of the other boys that had been there —his name was Andrews. They were talking about wages and differentials, and so on and so forth.

Q Was there anyone else present in the room but that employee, Mr. New and yourself?

A Mr. Foley.

Q Did you know that it was Mr. Foley at that time?

A No.

Q What happened next?

A When he was finished with Mr. Andrews, I went up to Mr. New and he asked me if I had filed my application, and I told him I did, and he said, "Well, you go over to the next table and talk to the gentleman at the other table."

Q Did Mr. New introduce you to Mr. Foley at that time?

A No, no, he didn't.

Q Now, when you say at the next table, can you describe to the Trial Examiner, were they seated in the fashion that counsel for the respondent—

A Well, the table was more or less like you have there, only it was 10 or 15 feet away.

Q Was this Mr. New's office or—

[Tr. p. 32.] A No, this was in sort of a conference room where they were interviewing people.

Q Now, when you went over to Mr. Foley, did Mr. New remain in the room?

A Yes, he did.

Q Now, as near as you can recall, what did Mr. Foley say to you and what did you say to him on that occasion?

A Mr. Foley introduced himself to me, told me he was with the Federated Guards' Union. I introduced myself, and he in turn said he had been looking forward to me coming over, and so one of the other guards had told him I was Chairman of the Committee and he had expected me to get there, and he put one of those affidavits in front of me there to sign, and I read it over, and he showed me the contract, and I said, "Could I take the contract home with me, I would like to read over it?" He said, "That's the only one I have, I can't give it to you."

TRIAL EXAMINER: Excuse me, counsel, but I think the witness is a little bit confused. He said he put one of those affidavits in front of him to sign. Was it an affidavit or an application,

THE WITNESS: I mean a pledge card.

TRIAL EXAMINER: A pledge card for what?

THE WITNESS: For their union, the Federated Guards' Union.

Q (By Mr. Gregory) For membership in their union?

A For membership in their union.

[Tr. p. 33.] Q The earlier application you spoke of was an employment application?

A That's right.

Q You may proceed now, as near as you can recall, what did Mr. Foley say and what did you say back?

A Mr. Foley, when I asked him about taking his contract home, he said that was the only one he had said to me that you had to belong to the union to work over there. I said "I understand that you do have a union." But he says to me, "Burns couldn't live with that contract." So, in our conversation, I told him, I said, "Well, I will have to go back and I'll talk to the men and see if they will want to sign the pledge cards,

and if they do, I will do everything possible to get them signed because he couldn't get into the compound anyhow to do those things. So I took the pledge cards—I didn't take the pledge cards with me, he mailed them to me a few days later.

Q Was Mr. New present throughout the conversation with Mr. Foley?

A Yes, he was.

Q While you were having it with Mr. Foley, did Mr. New say anything?

A No.

Q Did Mr. Foley say to you on more than one occasion that you would have to sign the pledge card in order to work for [Tr. p. 34.] Burns?

A No, that was the only time he told me, at that particular time.

TRIAL EXAMINER: How far was Mr. New from Mr. Foley at the time you were speaking to Mr. Foley?

THE WITNESS: About 10 or 15 feet away.

[Tr. p. 35.] CROSS EXAMINATION

Q (By Mr. Swerdlow) Mr. Reitzel, you were the committeeman for the United Plant Guard Workers?

A That's right.

Q By Mr. Swerdlow) Now, this conference that you met Mr. New in, the size of that room is roughly about 20 by 40, is it not?

A Approximately, I think, yes.

Q Mr. New was at one end of the room and Mr. Foley was at the other end of the room?

A No, Mr. New wasn't at the other end of the room; he was about in the middle of the room.

Q Mr. New was in the middle of the room, on the long side?

A That's right.

Q He was in the middle of the room, but Mr. Foley, where was he?

A He was close to the wall.

Q I see. Now, that is about the same distance that I am to that wall?

A About that, yes, I would say that.

Q What is your estimate of this distance?

A 20 or 30 feet probably.

Q Mr. Foley was 20 or 30 feet from Mr. New.

A Yes.

[Tr. p. 40.] Q Now, when you were speaking to Mr. Foley, what was Mr. New doing?

A I think he was interviewing some more men at the table.

Q He was sitting 20 or 30 feet from you talking to somebody else and you were at the other end talking to Mr. Foley; were you talking in the same tone of voice that you are talking in now?

A Yes.

[Tr. p. 43.] Q Now, at the time of the take-over—well. I'll say just before the take-over, when you were still working for Wackenhut, where was your post?

A Area 4, the Main Gate there.

Q You were at the Main Gate in Area 4?

A That's right.

Q And were you the only person in Area 4?

A At that particular time, yes.

Q And that post was manned 24 hours a day?

A That's right.

Q And you were there, what was your hours?

A Six to two, six in the morning until two in the afternoon.

Q You relieved the night man at six—

A That's right.

Q And you would see the fellow who relieved you at two?

[Tr. p. 44.] A That's right.

Q You worked on that post on June 30, just before the—the last day of the Wackenhut sub-contract?

A That's right.

Q Where were you working on July 1?

A July 1?

Q Yes.

A I was working in the same place.

Q And you worked on the same post for how long?
A Oh, I would say seven months, six or seven months.
Q Since July 1?
A Do you mean as of now or last year?
Q Since July 1.
A I worked there ever since Burns had taken over in July.
Q I see. You kept the same job?
A Same job.

[Tr. p. 58.] THOMAS C. WARE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Goldman) Mr. Ware, were you employed by Wackenhut Corporation?
A Yes.
Q During what period of time?
A I think I began with them June the 6th.
Q Of what year?
[Tr. p. 59.] A '66.
Q And what type of work were you hired to do?
A Assistant to the sergeant.
Q And that is a sergeant of what?
A He was the sergeant on duty at the time.
Q Plant guard?
A Plant guard.
Q Directing your attention to the early part of June, 1967, did you have the occasion of being contacted by someone, or did you contact someone with regard to a possible position with Burns at Lockheed Aircraft Service?
A Yes, I was notified by, at this time, Captain Bagby, at that time he was a sergeant, that Burns had got the contract and I was to go over if I wanted to get a job with them.

[Tr. p. 60.] Q (By Mr. Goldman) Now, I take it when you say you went over to get a job with them, you went over to the Burns' office?

A I went to the Burns' office to get an application.

Q (By Mr. Goldman) When you went over to the Burns' office, [Tr. p. 61.] who did you meet there?

A I don't know his name; there was a Captain over there and I asked for an application, and he gave it to me, and I left.

Q Was there anybody else there?

A There was a young lady in the office and some other help.

Q Did you have occasion to go back to the office with the application?

THE WITNESS: Yes, I took the application home, and after a few days, I took the application back down to Burns.

Q To Burns, you went into the Burns' office?

A Right.

Q Who was present in the Burns' office?

A The same Captain who told me to go into the next room.

Q Told you to go in the next room; did you go in the next room?

A Yes, I did.

Q What happened when you went into the next room?

A Mr. New was there at the table. I handed him my application.

Q Did you have a conversation with Mr. New?

A Yes, I did.

[Tr. p. 62.] Q What did Mr. New say to you?

A After looking over the application, he asked me if there was any questions, and I said, "Yes, I would like to know if there would be any cut in pay, I wanted to know about the hospitalization and medical and other pertinent details," and he said, "The gentlemen in the rear of the room will answer all those questions for you."

Q He said, "The gentleman in the rear of the room will answer the questions for you"?

A Right.

Q You heard the testimony of Mr. Reitzel; is this the same room as described by—

A Exactly.

Q —Mr. Swerdlow, 20 by 40?

A Right.

Q And whereabouts was this other man in the room?

A He was sitting at another long table and had his back against the wall.

Q Approximately how far from Mr. New and yourself?

A 30, 35 feet.

Q Did you go over to that gentleman who was sitting at the other end of the room?

A I had to wait till he finished with a gentleman, and when he got finished, I went over and sat down.

Q Did he introduce himself to you?

[Tr. p. 63.] A He did.

Q Well—

TRIAL EXAMINER: What happened when you went over and talked to this fellow?

THE WITNESS: Well, my first question was—I introduced myself and I said, "Mr. New told me to come over to see you, and I have some questions I would like to ask, and he said that you had the answers." He introduced himself, he didn't say he was union or anything.

TRIAL EXAMINER: Did he say who he was?

THE WITNESS: He said his name was Foley, that was all. After I asked the question, he didn't answer them, and he kept pushing this piece of application in front of me, and I pushed it back, and he pushed it, and I pushed it back, and finally I said, "What in the world is this, a game?" He said, "That is the pledge card for the union." I said, "I already belong to a union." "Well," he said, "that thing is out." I said, "In the State of California, I have 30 days to make up my mind whether I want to join your union or not." He said, "Not in this case," he says, "You join this, or you won't go to work for Burns." So, I told him that Mr. Reitzel was coming over to see him, and he was our chairman and he would get the complete dope for us,"

and I didn't hear from him after that. Then he gave me this card which showed he was connected with the union.

[Tr. p. 64.] TRIAL EXAMINER: When did you have that conversation with Mr. Foley? Before or after July 1st?

THE WITNESS: It was after July 1st.

TRIAL EXAMINER: How long after July 1st, after Burns took over?

THE WITNESS: I beg your pardon, before July 1st.

TRIAL EXAMINER: About how long before July 1st?

THE WITNESS: The latter part of June.

TRIAL EXAMINER: During the last week or so?

THE WITNESS: Yes, I would say so.

TRIAL EXAMINER: Proceed, counsel.

Q (By Mr. Goldman) While you were having that conversation with Mr. Foley, was Mr. New present in the room?

A No.

Q He wasn't. Did you notice when Mr. New left the room?

A He left as soon as I left them.

Q At that point, did you sign a card?

A No.

Q You didn't. Under Wackenhut, what was your duty station?

A Assistant to the Sergeant, stationed at Gate 201.

Q Gate 201. Now, when you started to work for Burns, were you assigned to the same duty station you just described?

A Yes.

[Tr. p. 70.] TRIAL EXAMINER: If you want to amend the complaint, certainly the idea of a complaint is not to confuse with a lot of questions about a Hackelhurst when there is no Hackelhurst.

MR. GOLDMAN: I move to amend the complaint.

TRIAL EXAMINER: Substitute Kretzlow in place of Hackelhurst in Paragraph 6 were it appears and also

in all other places in the complaint where the name Hackelhurst appears.

Any objection?

MR. SWERDLOW: No objection.

TRIAL EXAMINER: Without objection, the motion is granted.

[Tr. p. 71.] CHARLES A. BLANKEMEIER

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

[Tr. p. 72.] DIRECT EXAMINATION

Q (By Mr. Goldman) Were you employed by Wackenhut Corporation?

A Yes, sir.

Q Would you give us the dates?

A Well, originally I was hired as GPP, General Plant Protection. They bought out GPP, and I continued from May 18, 1959, up to the present time.

Q You are not with Wackenhut right now, you are working for Burns?

THE WITNESS: To July 1.

Q (By Mr. Goldman). What type of work were you hired for?

A Plant Guard.

Q Did there come a time you had a conversation with someone regarding possible further employment with Burns Detective Agency at Lockheed Aircraft Service?

A They had told me they were taking over. It was just rumored.

Q Did there or did there not come a time when you had a [Tr. p. 73.] conversation with somebody about filing an application?

A A Lieutenant Holman came to the main gate at Lockheed with an application for me.

TRIAL EXAMINER: When was this?

THE WITNESS: 28th day of June.

Q (By Mr. Goldman) Did you have a conversation with Lieutenant Holman on that date?

A Yes, I did.

Q What did he say to you?

A He wanted to have me sign an application. I asked him if you had to join a union. He said I could save my three bucks, I didn't have to join.

Q Did he give you the application?

A Yes, he did.

Q Did you have occasion to return the application?

A He wanted it immediately. I said I couldn't do it at the time, I was busy. So I returned it the next day.

Q (By Mr. Goldman) Did you have occasion to go to the Burns' office at the airport the latter part of June, 1967?

A Last day of June, to pick up a uniform.

Q To pick up a uniform; who was present when you arrived [Tr. p. 74.] at Burns' office at the terminal?

A Major Goddard and Captain Kretzlow.

Q What did you do when you entered the office?

A I asked for my uniform, and Major Goddard handed it to me, and as I was preparing to leave they had me sign a statement of receiving that uniform, and as I reached for the box to go out, he said, "There is another slip to sign." That was union.

Q I show you General Counsel's Exhibit No. 4 which has been marked for identification as Exhibit No. 4; can you identify this?

TRIAL EXAMINER: That was presented to you by who?

THE WITNESS: Captain Kretzlow.

TRIAL EXAMINER: In the presence of Major Goddard?

THE WITNESS: Yes.

MR. GOLDMAN: I would like to offer this into evidence at this time without the writing.

MR. SWERDLOW: What writing are you referring to?

(Mr. Swerdlow is shown by Mr. Goldman.)

MR. SWERDLOW: I would like to ask some questions about those arrows.

TRIAL EXAMINER: All right, I will permit that.

MR. SWERDLOW: Were these arrows on here when you got it?

THE WITNESS: Yes.

MR. SWERDLOW: Whose initials were these?

[Tr. p. 75.] THE WITNESS: I don't know.

MR. SWERDLOW: Were they on it when you got it?

THE WITNESS: This was on, this was on (indicating).

TRIAL EXAMINER: This doesn't mean anything in the record.

The signature of Jack Foley was on there at the time you got it?

THE WITNESS: Right.

TRIAL EXAMINER: The writing, "$5.00", after "Initiation Fee", was that on?

THE WITNESS: Yes.

TRIAL EXAMINER: Those arrows were on it?

THE WITNESS: Yes.

TRIAL EXAMINER: You don't know whether the initials were on it or not?

THE WITNESS: No.

TRIAL EXAMINER: This "Amount Paid", was that crossed out at the time you got it?

THE WITNESS: No.

MR. SWERDLOW: What about that one?

THE WITNESS: That was not on there.

TRIAL EXAMINER: Any objection to receipt in evidence?

Without objection, General Counsel's Exhibit 4 for identification is received in evidence.

(Above-referred to document was marked General Counsel's Exhibit No. 4 for idenitfication and received in evidence.)

[Tr. p. 76.] Q (By Mr. Goldman) Directing your attention to General Counsel's Exhibit 4, Mr. Blankemeier, did you sign the form where the two arrows point?

A You mean that piece of paper?

Q A form similar to this where two arrows are pointed?

A Yes, I did.

MR. SWERDLOW: I don't understand the question.

TRIAL EXAMINER: He signed the form similar to General Counsel's Exhibit 4 and at the places where the two arrows are pointed.

Q (By Mr. Goldman) When you signed the form, were there any other parts of the form that were filled out?

A No, except as mentioned before.

TRIAL EXAMINER: Jack Foley was written on it?

THE WITNESS: At the bottom.

Q (By Mr. Goldman) Where Jack Foley was written on it, were any of these?

A No.

TRIAL EXAMINER: After you signed it, what did they do, throw it away?

THE WITNESS: Keep it.

TRIAL EXAMINER: How do I know?

Q (By Mr. Goldman) After you signed this form, what happened?

A Went along with the uniform size.

[Tr. p. 77.] Q Went to Captain Kretzlow?

A Captain Kretzlow kept it.

Q What else happened?

A That's it.

TRIAL EXAMINER: Did you give him five dollars?

THE WITNESS: No, I didn't.

DIRECT EXAMINATION

Q (By Mr. Gregory) Lieutenant Holman who gave you the application for employment at the gate was a Burns' Lieutenant or a Wackenhut Lieutenant?

A Burns.

Q Was Major Goddard present when you handed back the signed union application card?

A Yes, he was.

[Tr. p. 82.] HARRIS K. CAMP

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Goldman) Mr. Camp, were you employed by Wackenhut Corporation?

A Yes, I was.

Q During what period did you work for Wackenhut?

A At the Lockheed plant, I worked from April, '56, till the last of June, '67.

Q What type of work were you hired for?

A Plant Guard.

[Tr. p. 83.] Q (By Mr. Goldman) Did you have occasion to contact anyone with respect to possible future employment with Burns?

A First, Mr. New and Sergeant Bagby notified me Burns had the contract and if I wanted to work, to go over and get an application and fill it out.

Q Did you go over and get an appliaction?

A Went over on or about the 10th of June, I reported to the Burns' office.

Q Where is this office?

A Main Terminal building, Ontario Airport, at that time, Room 2. I went, started into the office. Major Goddard and the secretary were in the office. They told me to go to the next room and wait. I went in, and the only man in there was Mr. Foley, and he introduced himself.

Q Did you have a conversation with Mr. Foley?

A Yes, I did.

Q What was said?

A He told me Burns had the contract now, if I wanted to work for them, I would sign the union card. He handed the union card out, and at that time I was on my way to work, so [Tr. p. 84.] I told him I would think about it. I went back into the office when he finished, received an application from Major Goddard. He interviewed me, gave me the application. I didn't fill it out at that time. I filled it out and brought it back the next day.

Q Did you have a conversation with Major Goddard at that time?

A Yes, sir.

Q What did he tell you?

A To fill out the application and bring it back, which I did; the next day I brought it back to him, gave it to him, and they got my clothing sizes, and at the time I told him I was going on a 15 day vacation, I would be back the 1st of July.

Q Did you have occasion to visit the Burns' office sometime later in the month or pick up your uniform?

A Yes, I did, when I returned from vacation. On the 30th of June, I went in, picked up my clothes, filled out the clothing slip, and on the stack was a slip that was supposed to be signed for the union.

Q Directing your attention to this dealing you had for your uniform, who was present there?

A Major Goddard and secretary—I don't know her name.

Q That was when you had to go pick up your uniform?

A It was, I picked up my uniform, Captain Kretzlow gave [Tr. p. 85.] me the paper work to sign for the clothing and the slip for the union.

Q Union pledge slip?

A That's right.

TRIAL EXAMINER: If it's the same as General Counsel's 4, why don't you show that to him and ask him if the pledge card you refer to is like this?

Q (By Mr. Goldman) Was the slip that Captain Kretzlow gave you similar to General Counsel's Exhibit No. 4?

A Yes, it was similar to that.

Q Did you have a conversation with Kretzlow?

A Yes. He just told me to fill out the clothing slip.

TRIAL EXAMINER: What did he say about the union slip, if anything?

THE WITNESS: He said that had to be signed. That was in the paper work for the clothing, though. I went ahead and signed it.

Q (By Mr. Goldman) Under Wackenhut Corporation, what was your duty station?

A I was the swing shift sergeant.

Q Beg your pardon?

A Swing shift sergeant.

Q Now that you are working for Burns, what is your duty station?

A The same only day time.

[Tr. p. 86.] TRIAL EXAMINER: Is it stipulated that sergeants, Wackenhut and Burns, were employees and not supervisors within the meaning of the Act?

MR. GOLDMAN: No, it's not stipulated as such. I would like to offer that.

TRIAL EXAMINER: I am asking, will you stipulate?

MR. GOLDMAN: Yes, that they are employees, not supervisors.

TRIAL EXAMINER: Will you so stipulate?

MR. SWERDLOW: Yes.

TRIAL EXAMINER: Stipulation is accepted.

MR. GREGORY: Both as to Wackenhut and Burns.

TRIAL EXAMINER: As to Wackenhut and Burns.

DIRECT EXAMINATION

Q (By Mr. Gregory) Mr. Camp, on the occasion of your visit on June 10 to the Burns' office, when you said Mr. Foley introduced himself to you; this room, was that part of the Burns' office?

A It was in the building. It was 210, I believe, the room they were in at that time was 212.

Q The room next to the room that Major Goddard and the secretary were in?

A Yes.

Q After you signed the union application card, General [Tr. p. 87.] Counsel's Exhibit 4 on or about June 30, what did you do with it?

A I gave it to Captain Kretzlow.

Q Did he say anything to you at that time?

A No.

[Tr. p. 90.] STANLEY L. GANIEWSKI

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Goldman) Were you employed by Wackenhut Corporation?

[Tr. p. 91.] A Yes, sir.

Q During what period of time?

A Say from 1964, continuous until June the 30th.

Q For what type of work were you hired to do?

A Security Guard.

Q Did there come a time when you had a conversation in regard to employment with Burns at Lockheed?

A Scuttlebutt was going on the early part of June, Wackenhut was losing the contract and Burns taking it over, and I was supposed to go over to Ontario Terminal Building at the Airport, that was to go there, I believe it was about the 10th of June. Major Goddard was sitting there with the secretary and some other Burns' officers were there. I asked Major Goddard where were the applications at. He pointed to the hall to the left. I believe it was Room 212. I walked in there. There was only one man present at the time. That was Mr. Foley. He introduced himself, stated his business, that he was a union representative for the Burns' organization, the American Federation, whatever it is. He told us now that Wackenhut is out, we would have to join their union in order to continue working. So he had a little contract book with him, and he started reading over various paragraphs. I interrupted him and asked him, "Who does the union represent, management or labor?" He didn't answer. He continued on with something else. So I asked him for a [Tr. p. 92.] copy of that contract. He stated that was the only one he had, he couldn't give it out. He kept on talking about what a good organization they had, the union, seventy-five thousand in the bank, modern furniture, new equipment. I am not interested in the equipment they have. So he had a little card and asked me to sign it. At that time, I said, "If you can't answer the questions," I said, "I have to go to work. I'll think about it." So, I departed the building and reported to my post.

Q When Mr. Foley referred to a card, I show you a copy of General Counsel's Exhibit 4; is this similar to the card he showed you?

A He had so much paper in front of him, you couldn't tell. Yes, sir, this is something similar.

Q Did you sign such card?

A Not that particular day.

Q Under Wackenhut Corporation, what was your duty station.

A At the beginning, it was more or less fill-in various posts, but for the past, I would say, year and three months, I have had interior security, Hanger 2.

Q That's with Wackenhut Corporation?

A Yes, sir.

Q When you started working for Burns, were you assigned to the same post?

A The same position, yes, sir.

[Tr. p. 93.] Q Are you still in that position?

A Yes, sir.

CROSS EXAMINATION

[Tr. p. 95.] Q (By Mr. Swerdlow) Did you see Mr. New?

A Let's see. It was much later when he accepted an application to get my clearance, transfer from Wackenhut organization to the Burns' organization.

Q This was after you signed the union card?

A Much later.

[Tr. p. 96.] Q Was there any discussion of the union with Mr. New?

A The only thing he said, my salary would be the same as it was with Wackenhut, and the first pay check, it was a dollar short—a dollar sixty-five, 15¢ an hour short.

REDIRECT EXAMINATION

Q (By Mr. Gregory) Did you say the pay check came up 15¢ short? What rate had you been receiving prior to being employed by Burns?

A Not directly to me, but to the group.

[By Trial Examiner] Who told this to the Group.

THE WITNESS: Mr. New.

[Tr. p. 97.] TRIAL EXAMINER: This was after Burns had taken over.

THE WITNESS: That was in the month of June.

TRIAL EXAMINER: They told you your pay would remain the same?

THE WITNESS: Yes, sir.

TRIAL EXAMINER: It turned out it didn't remain the same?

THE WITNESS: No, sir.

Q (By Mr. Gregory) What is your present rate of pay?

A It was adjusted six pay days later. This would be sometime in August, in that period somewhere.

Q From July 1 to the latter part of August, your pay was $1.60?

A Right.

Q Subsequently raised to $1.75?

A Before that, if I may state this: I talked to Captain Bagby, asked him about my pay situation, which Captain Bagby couldn't do anything, referring me to Major Goddard. I went to see Goddard. He told me if I am dissatisfied, to quit, and they would adjust my differance in pay to terminate me. I just smirked under my breath and walked out.

Q When was your pay adjusted to $1.75 an hour?

A I couldn't exactly state, the last pay day of August or the first pay day of September, when everybody had his pay adjusted.

Q Was there any retroactive pay?

[Tr. p. 98.] A Yes, sir.

Q That pay check, did you receive the difference from July 1 until that pay check?

A Yes, sir.

WALTER DRAKE

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q Mr. Drake, were you employed by Wackenhut Corporation?

A I was.

Q During what period of time did you work for Wackenhut?

A Well, from the time they bought the General Plant out. I would judge around 1960, I am not sure, I think it was '60, '61.

[Tr. p. 99.] Q Up until when?

A Up until July 1.

Q What type of work were you hired for?

A Plant Guard.

Q Did there come a time when you had occasion to fill out an application card or contact anybody regarding the applying for a job with Burns Detective Agency at Lockheed Aircraft Service?

A Yes, sir.

Q Approximately when did this occur, and who did you see?

A First one I talked to was Major Goddard.

Q What did he tell—

TRIAL EXAMINER: When?

THE WITNESS: I would judge somewhere around the 10th to 15th of June.

Q (By Mr. Goldman) What did Major Goddard tell you?

A I asked him about the wages and one thing or another, and he said, "you won't lose anything." He said the wages would be the same.

Q On or about the latter part of June, did you have occasion to go to the Burns' office at the Terminal Building at the Ontario International Airport, did you have occasion to go to the Burns' office?

A I did.

[Tr. p. 100.] Q (By Mr. Goldman) Why did you go there?

A To pick up my uniform.

Q When you went to the Burns' office, who was present?

A Major Goddard, some Captain, don't ask me who he was, I don't know.

Q Did you have a conversation with this Captain?

A The Captain brought the uniform over and handed me a slip of paper and said, "You will have to sign this." I took a look at it and say, "Why?". He said, "You have to sign it before you can go to work."

Q When he said, "You have to sign this," was he referring to something similar to General Counsel's Exhibit No. 4?

A Looked very much like it to me.

TRIAL EXAMINER: Did he tell you what it was for?

THE WITNESS: Yes.

TRIAL EXAMINER: What did he tell you it was for?

THE WITNESS: Their union.

[Tr. p. 101.] TRIAL EXAMINER: And was Major Goddard within hearing distance when this Captain made this statement to you?

THE WITNESS: As close as that gentleman here.

TRIAL EXAMINER: Would you say he was two or three feet?

THE WITNESS: Not over five.

TRIAL EXAMINER: Not over five feet from you. Did you sign the paper?

THE WITNESS: Not then. I didn't know.

TRIAL EXAMINER: What did you say, if anything, when they asked you to sign this?

THE WITNESS: I said, "I understand I have 30 days." They said you would sign it before you went to work or just wouldn't go to work.

TRIAL EXAMINER: You may examine.

Q (By Mr. Goldman) After you had told Captain Kretzlow you didn't want to sign it, what occurred?

A I went down to wait for Captain Bagby to tell him I wouldn't be in in case he had me scheduled. I waited about an hour. He didn't come over. So I went back up to tell them to tell him when he came in I wouldn't be there. There was nobody in the office but Major Goddard. He apologized and said I was right as far as the 30 days was concerned, but they would still like to have them signed before we went to work.

Q What was he referring to when he said, "They would like to have them signed"?

[Tr. p. 102.] A This paper or similar.

Q Union pledge card?

A Yes.

Q Did you sign that card?

A Yes.

TRIAL EXAMINER: That night?

THE WITNESS: That night. I left it laying right there. I had my uniform papers I signed for, and this paper was laying on top of it.

Q (By Mr. Goldman) Did you have a uniform box?

A Yes.

Q Were there any notations?

A Yes, "won't sign".

Q Were you present when that was put on the box?

A I was not present when it was put on the box.

Q (By Mr. Goldman) Why did you sign the card?

A Well, I got to work.

Q Under Wackenhut, what was your duty station?

A Well, I had several, I worked the post Mr. Reitzel worked and about everything in the plant.

Q Now, you are working for Burns, what is your duty station?

[Tr. p. 103.] A Swing shift sergeant.

MR. GOLDMAN: No further questions.

DIRECT EXAMINATION

Q (By Mr. Gregory) Mr. Drake, now that you are employed by Burns, are you working the same post you were working with Wackenhut?

A I have to get around to the same post, let's put it that way, nothing further.

[Tr. p. 108.] ARTHUR C. POTTER

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Q (By Mr. Swerdlow) Would you please state your name and address.

A Arthur C. Potter, 1880 Los Robles, San Marino.

Q Mr. Potter, could you state who your employer is?

A I am director of West Coast Operations and Area Manager for Los Angeles for the Wackenhut Corporation.

Q Now, how long have you been in this particular position?

A Since approximately June of 1966 in this particular position. I say approximately because I came out here from Florida about that time.

Q Are you familiar with the operations of the Wackenhut Company in the Los Angeles and let's say Southern California area?

A I am.

Q Are you familiar with those operations as they were in 1967 prior to June 1?

A Yes, sir, I am.

[Tr. p. 109.] Q Now, approximately how many employees did Wackenhut Company—well, before we get into that, you were in your present job when the United Plant Guard Workers Union got the union organized and campaigned at Lockheed?

A Yes, sir.

Q And you are familiar with the operations of Wackenhut Company as they were in Southern California at that time?

A I am.

Q Now, the questions that I am going to ask you relate to the time that the union petitioned for election, the early part of 1967—

MR. GOLDMAN: At this time I would like to make the objection voiced in my opening statement that General Counsel considers this evidence irrelevant since even in plant protection service cases, a single plant unit is appropriate and whether the union is going to attempt to organize a larger grouping or whether the employer could have asked for a larger grouping, is immaterial.

TRIAL EXAMINER: Well, I note your objection. You think merely because you have a guard unit, that only a single plant unit can be appropriate; you could have wider.

MR. GOLDMAN: Yes, but only asking for an appropriate unit, and General Counsel contends a single plant unit is an appropriate unit.

TRIAL EXAMINER: Yes, well, I can conceive the situation [Tr. p. 110.] where Burns might come along, perhaps be organized all over the country. Maybe it's only one unit, or all Burns' employees throughout the country, and anybody, that that's the appropriate unit for accretion or something. I don't know. At the moment, I am overruling the objection.

MR. GREGORY: May I make the further objection, the evidence appears to be irrelevant and immaterial, that is as to the Wackenhut operation in the West Coast and, specifically, Lockheed, we have already stipulated that.

TRIAL EXAMINER: That seems to me to be pretty much correct. But we have a situation here where we have got a certified unit as recognized for Lockheed employees as plant guards. You don't dispute that was the appropriate unit so far as Wackenhut was concerned?

MR. SWERDLOW: Well, that's just what I am going to dispute, and the reason I think I have the right to dispute it is because, that was the appropriateness of that unit is very relevant to this proceeding, if that was not an appropriate unit, certification was improper and UPGW would have no bargaining right. Now, Burns was not a party to certification, and it is entirely erroneous to find we are bound by proceedings we were not a party to, and our rights depend on it, and this is especially so when there was never any hearing on this.

TRIAL EXAMINER: I am not concerned with whether or not [Tr. p. 111.] there was a hearing. The Regional Director approved of the consent election and stipulation, and the election having taken place, I would find that the Regional Director's action was properly conducted in due course, but I don't imagine you are going to be awfully long with this, are you?

MR. SWERDLOW: I don't know, I haven't met with Mr. Potter. I don't know what he is going to say.

TRIAL EXAMINER: I don't want you to be preparing your case while the witness is on the stand.

MR. SWERDLOW: The witness would not cooperate when we subpoenaed him.

TRIAL EXAMINER: All right, go ahead. Objections are overruled.

MR. GREGORY: I don't mean to belabor—

TRIAL EXAMINER: That's all right.

MR. GREGORY: It occurs to me when the demand for recognition was made by Charging Party on July 12 as reflected in stipulation, there shouldn't be any question. At that time, there was no question of the appropriateness of the demand insofar as it related to the unit, but simply insofar as apparent recognition had been granted to AFG. Now, because it is completed, I submit this is not the time in which to litigate a unit question.

MR. SWERDLOW: You are arguing on that, I understand, would be able to, may do it, that this we shouldn't be [Tr. p. 112.] allowed to argue.

MR. GREGORY: I would submit it's that, but it's more than that. That is not the essence. It is well established practice and procedure that representation matters are not litigated in "C" cases, and you had the opportunity, and you may yet have it if you want to file.

TRIAL EXAMINER: Address yourselves to me in this proceeding, not to each other.

MR. SWERDLOW: The representation matters not litigated in unfair labor practice cases has recently been ruled upon by two courts of appeal and which the result being that the Board and the cases were reversed for denying the hearing in 8(a)(5) case on matters which should have been raised and were raised during the "R" case. I can direct the Trial Examiner—

TRIAL EXAMINER: No, I am familiar with the case. When you say matters of unit and that sort of thing, you will note that General Counsel here alleges the appropriateness of the unit, and this is his responsibility to prove appropriateness of the unit. We take the position that he does that by introducing the certification. I am not certain in my own mind as to what my ultimate conclusions will be, but it occurs to me that per-

haps it's not improper for Respondent to be allowed to introduce evidence which is credited and might show that the unit is not appropriate, and I don't [Tr. p. 113.] think that merely because there has been a certification in the proceedings to which Respondent was not a party, that, therefore, for all time the unit question is resolved.

In any event, do you have any further objections?

MR. GREGORY: No, sir.

TRIAL EXAMINER: Nothing, Mr. Goldman?

MR. GOLDMAN: No.

TRIAL EXAMINER: The objections are overruled. Proceed, counsel.

Q (By Mr. Swerdlow) Well, I believe you testified that you were familiar with the operations of Wackenhut Company during the period when this election petition was filed for re-certification?

A Yes.

Q Can you tell me briefly what the organizational structure of the Wackenhut Company is, how you fit into it as the Director of West Coast Operations, who you report to, who they report to, how the division of the company is set up? Basically, I would like the kind of information that would appear in an organization chart.

A The Company is headed up by George Wackenhut as President, Corporate Headquarters at Coral Gables, Florida; Chief Vice-President John Ammerill; Vice-President in Charge of Operations; Vice-President in Charge of Development, and other corporate officers are all located at Coral Gables, [Tr. p. 114.] Florida. Would you like me to name the others?

Q No.

A We have offices in various principal cities in the United States and including South America. I was designated Director of West Coast Operations sometime in June, 1966, and requested by Mr. Wackenhut to take charge of the operations in Los Angeles, given the position of Area Manager for Los Angeles Office.

Q What territory was in your jurisdiction?

A It has not been defined geographically, but let me illustrate it in this way, in that we have operations, and

do at this time have operations in Martinez, California; we have our company corporation in Livermore, California, Santa Ana, and Orange County, and branch office in Santa Ana; and contract work up through Rio Grande Valley and San Gabriel Valley. We do not have offices as such in any of the West Coast States at this time.

Q In your office, who handles jobs, who would handle jobs for Wackenhut in the State of Washington?

A I would have to, more or less, it would depend on the job and its magnitude; I might, if the job warranted it.

[Tr. p. 115.] Q (By Mr. Swerdlow) What about the State of California, is your jurisdiction over all jobs?

A With the exception of Livermore, I am.

Q I am talking about the time of certification; you are talking about February and March, 1967, at that time; all my questions are going to be related to that period, not your present operation. At that time, your office had jurisdiction over all the jobs in California?

A All with the exception of one supervised out of our corporate headquarters.

Q That's at Coral Gables?

A That job was not in this area, but in the State of California.

Q Does your office handle any jobs, states bordering in California?

A Not if you are speaking of guard operations. I might supervise and occasionally investigate in some other state, not on guard jobs.

Q All the guard operations are in California. Now, how many different jobs does Wackenhut Company have in the State of California that were under your jurisdiction at that time?

A I couldn't say off hand; there are several hundred of them. I would have to look at the records.

[Tr. p. 117.] TRIAL EXAMINER: Do you have any contractual relation with any union covering all the guard operations?

THE WITNESS: No, we do not.

TRIAL EXAMINER: Do you have any covering more than one guard job operation?

THE WITNESS: Not to my knowledge, not in California.

TRIAL EXAMINER: All right, not in this area?

THE WITNESS: No.

TRIAL EXAMINER: Go ahead, counsel.

Q (By Mr. Swerdlow) I would like, to the best that you [Tr. p. 118.] can give us, an estimate of the number of guard jobs that Wackenhut had at the time we are concerned with here, regardless of the number of guards on the job, and excluding investigations, investigating kind of jobs?

MR. GOLDMAN: I object. I think that's ambiguous. He is not defining the territory.

TRIAL EXAMINER: He is talking about the area under this witness' jurisdiction.

THE WITNESS: It would be a very rough estimate.

TRIAL EXAMINER: Well, give us a rough estimate.

THE WITNESS: I could only say two or three hundred.

Q (By Mr. Swerdlow) All those jobs were supervised out of your office, the overall top level supervision?

A Yes.

Q Now, where is the Wackenhut office that you operate out of?

A This particular office where I have my administrative office, 618 South Serrano Avenue in Los Angeles.

Q And you supervise all of these jobs out of this office. Are there other organizations of Wackenhut Company in the California area, in the State of California?

A As of the date you mention, the only other office would be our branch office at Santa Ana, California, and the central station for alarm work at 6900 South Hoover Street in Los Angeles.

[Tr. p. 120.] Q (By Mr. Swerdlow) How are wages, fringe benefits, determined for employees in the California area?

A Those wages are set and approved by our corporate office in Coral Gables.

Q Is it the same for all employees in the California area?

A Yes, I might recommend subject to approval of the corporate office.

Q This would include all employees?

A Yes, sir.

Q What about fringe benefits?

A The same would apply, generally speaking.

Q What I mean by fringe benefits, holidays?

A Yes.

Q Vacations, things of that nature; is that the same as wages?

A Generally speaking, yes. I say generally speaking because, of course, we have our conferences and agreements and negotiations with our client and our final agreement and our final contract subject to approval by corporate headquarters at Coral Gables.

Q I see, and before it's approved, you have to approve it?

A Yes, sir.

[Tr. p. 132.] Q And the coordinator, is his job keeping track of where an area supervisor is on different days?

A Gives them assistance where needed, hiring men and training men, placing them on particular spots.

Q Meaning guards?

A Yes, sir.

Q What do the area supervisors do?

A Supervise the jobs and men in their particular area.

Q Now, let me get back to the coordinator for one minute; is he in a policy making role?

A No.

Q Area supervisors; you had eight of them at the time of the election; what are their functions?

A To supervise the guard jobs in the particular area.

Q About how many jobs does each area supervisor supervise?

A That varies a great deal depending upon the geographical covering of this area and the number of guard jobs in the area. He may have only four guard jobs in the area; he may have a dozen.

Q And if he has four guard jobs, how does he divide his [Tr. p. 133.] time?

A Divides his time up wherever is most appropriate. Some jobs require a lot of his attention; some require very little.

Q When you say he supervises the jobs, what does he actually do with regard to them?

A He has to see positions covered on all three shifts, and if a man fails to show up because of illness or for any other reason, he gets hold of another man, gets him in there to cover that spot, sees that we fulfill our contract in that particular area.

Q He checks to see if the company policy is being enforced?

A Yes, sir, that is part of his responsibility.

Q Now, these eight, they cover the California area?

A Yes.

Q About how many facility supervisors did you have at the time?

A I couldn't even approximate. It would generally fall into a definition category, as to what is a facility supervisor, generally only on larger jobs, might be on some other jobs, might be at the request of the client a lead guard or what-have-you. So, my guess, any guess I made would be a guess, not a statement, it would be very rough, I am afraid not more than one quarter of our jobs, if that high, is facility supervised. I may be way high.

[Tr. p. 134.] Q Facility supervisor is the lowest level supervisor that the company has, is that right?

A Depends on the definition of a supervisor; the lowest level that we would, company-wise, give him.

Q The title of supervisor?

A Yes. He may have the title of Sergeant, Captain, Lieutenant.

Q Are there people below him who have the power to hire, fire?

A No, a facility supervisor may not have the power to hire or fire, depending on the particular authority given him.

Q What about the authority to make effective recommendations with regard to hiring and firing or other disciplinary matters?

A I would say he would be most likely to have the authority to hire, most facility supervisors would have that responsibility, but he may not have the responsibility to fire. We want to hold that authority to the area supervisor.

Q The facility supervisor is the lowest supervisor, speaking of authority to hire and fire, the facility supervisor is the lowest supervision of the company?

A Yes.

Q Now, with the area supervisors, do they hire employees, interview them and process?

[Tr. p. 135.] A Generally speaking, yes.

Q That's what they do, do they discharge employees, fire them?

A Yes, area supervisor may very well discharge or fire an employee.

Q And with respect to all of the jobs under your jurisdiction, they do this, the area supervisors?

A Yes, there may be an occasional exception where the facility would.

Q He will delegate that?

A Yes.

Q Would that be frequent?

A Rare.

Q What percentage of your jobs do you think that happens, that area supervisors delegate the authority to the facility supervisor to hire or fire?

A He would not have delegated that—I recall—he would not delegate that authority. We or the manager of physical security might delegate that authority to the facility supervisors.

Q I am not trying to trip you. With regard to those facility supervisors, percentage-wise, what percent of facility supervisors would have that kind of delegation?

A A very small percentage because it would only be our policy, that policy would be carried out on large facilities.

[Tr. p. 137.] Q Now, in regard to guards, do you interchange guards? [Tr. p. 138.] I am talking about, again, everything I have been asking about relates to the time of this election?

A There are some areas where you interchange quite a bit, and other areas very, very seldom.

Q Let's take the Los Angeles County area?

A I am speaking of the Los Angeles County area, I am saying within the Los Angeles County area, there are various areas where we interchange quite a bit and others where we don't because of geographic and clearance problems and other problems, and because of the fact that problems of working conditions and pay rates are such that we can't interchange, or because it wouldn't be economically feasible. We may have a job setting so far from another job that it's not feasible to interchange.

[Tr. p. 147.] Q When did Wackenhut first get the Lockheed job?

A The Lockheed job was one of the jobs already in existence when the Wackenhut Corporation purchased the General Plant Protection Company in 1962.

[Tr. p. 153.] Q Now let's talk about the Lockheed job again. How many employees of Wackenhut have hired on at Lockheed again, talking about the period just at the time of the election?

A There was fluctuation on this job as in any other job because of our need to have men on standby and part-time basis to fulfill the requirements of Lockheed Aircraft Service.

Q What's the range that you fluctuate?

A I would say somewhere in the neighborhood of 42 men and the supervisor.

Q And supervisor?

A 43 including the supervisor.

Q One supervisor and 42 guards! I am not trying to confuse, I just didn't understand.

[Tr. p. 154.] (By Mr. Swerdlow) There was a supervisor on the Lockheed job?

Q I see, and who was that supervisor?

THE WITNESS: Russell Frazier.

Q (By Mr. Swerdlow) And when Wackenhut ceased to perform guard services at that facility, Lockheed facility, did Frazier remain as a Burns' employee?

A No, he did not.

Q Now, were there sergeants below Frazier on the job?

A Yes, sir.

Q And did they vote in the election that took place that the Board conducted in February?

A I don't know who voted in the election.

Q Now, the employees at Lockheed, now, were any of them transferred from other jobs Wackenhut had?

A Some of them may have been. I cite as an example, that in view of the security clearance requirement, a man could not always be put immediately on that job until his clearance came through. Generally, that man would be assigned to a facility no longer in operation by Wackenhut Corporation—moved to another area, that was immediately west of Lockheed—and would be placed in that particular position not requiring [Tr. p. 155.] clearance temporarily until his clearance came through, and then assigned to Lockheed facility.

Q How many people were assigned in that manner in the year that immediately preceded the election?

A I have no idea.

Q Who would have that information?

A That would be in our company's records.

Q Now, Captain Frazier was at the job for the entire year preceding the election?

A Yes, sir.

Q Did he work for General Plant Protection before Wackenhut?

A Yes, he did.

Q Were any people transferred from the Lockheed job the year immediately preceding the election to other Wackenhut jobs?

A Were any other people transferred from Lockheed jobs to other jobs?

Q Were any guards transferred from Lockheed job to another job that Wackenhut has?

A Not to my knowledge.

Q And would the company records, or would this be the kind of matter that you would have personal knowledge of?

A No, not necessarily because we have many jobs.

Q The company records would indicate the number transferred [Tr. p. 156.] in and out?

A Searching of payroll records, I imagine this information could be determined.

Q Now, Captain Frazier did have authority to hire employees?

A Yes, within the restrictions I have previously mentioned in testimony.

Q Now, did Captain Frazier have authority to discharge employees?

A Yes, he did.

Q And would his action be subject to approval of anybody in the company?

A Certainly, it would be subject to the approval of the manager of physical security and my approval.

Q Would he take the action before getting this approval or take the action and then get approval afterward; if that's not the way it works, how did it work?

A I couldn't answer that because I don't recall if anyone was discharged by Captain Frazier.

Q Was anybody disciplined?

A Yes, I can state to my own knowledge there were disciplinary measures taken of the guards during that period of time, yes, sir.

Q Did Captain Frazier get approval before taking those actions?

A Yes, sir, he filed a report.

[Tr. p. 157.] Q And then after the report was approved, he would take the action that he wanted to?

A He would take the action that he was instructed to take.

Q Now, where do the employees get their uniforms from?

A Well, speaking of all of our employees in the State of California, they get them from various locations, depending on the location where they are assigned.

Q Where would Lockheed get them?

A They would come into headquarters.

[Tr. p. 161.] Q (By Mr. Swerdlow) When the contract with Lockheed terminated, what happened to the Wackenhut employees; you already testified Captain Frazier remained as a Wackenhut employee?

A The other employees were terminated.

A All of them?

A Yes, sir.

Q Are there any of them now working for Wackenhut on other jobs?

A Not to my knowledge.

[Tr. p. 163.] CROSS EXAMINATION

[Tr. p. 169.] Q (By Mr. Goldman) When a new job was needed, new staffing requirements had to be met at Lockheed Aircraft Service, what did the facility supervisor, Mr. Frazier, do?

A Locate the man or men needed, interviewed them, he would have them submit applications.

Q Did he advertise in newspapers, to the best of your knowledge?

A To the best of my knowledge, it would be a rare occasion when he advertised in newspapers in this particular area.

Q Did he operate out of the Santa Ana office at all?

A No, sir.

Q I would like to get back to the Livermore operation; I understand you are in charge of all California except for Livermore?

A That's true.

Q Why, to the best of your knowledge, why is Livermore not included?

A I can only say that was company policy.

Q Where are the records of employees of Livermore kept?

A I do not know, sir.

Q Are they kept at your office?

A No, sir.

Q Kept somewhere other than your office?

A Yes, sir.

[Tr. p. 189.] J. FORREST INGLE

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Swerdlow) Mr. Ingle, would you state your present employer and your title?

A Branch Manager for the Los Angeles office of the William J. Burns International Detective Agency, Inc.

MR. SWERDLOW: I would like to have this marked for identification. This is Number 2.

(Document referred to above was marked Respondent's Exhibit No. 2 for identification.)

Q (By Mr. Swerdlow) Mr. Ingle, I am going to show you a copy of Respondent's Exhibit No. 2; could you tell me what that is?

A That is an organizational chart of the William J. Burns [Tr. p. 190.] International Detective Agency, Inc.

Q And how was this prepared?

A This was prepared in my office with particular reference to the station of the Los Angeles office and its responsibility to the general headquarters and in reference to the area of the Los Angeles office operations.

Q Who prepared it?

A It was prepared by my assistant from a rough draft which I furnished him.

Q Did he alter anything that was on the rough draft?

A No.

MR. SWERDLOW: I offer Respondent's Exhibit No. 2 into evidence.

TRIAL EXAMINER: Any objections?

MR. GOLDMAN: Yes, Your Honor. Shift supervisors, we did stipulate that the sergeants in our proceeding, namely Drake and Camp, were employees under the Act, just to make this clear that this is not shift supervisor, statutory supervisor.

MR. SWERDLOW: O.K.

TRIAL EXAMINER: You do not contend, Mr. Swerdlow, that where there is a listing for "shift supervisor", that they are supervisors within the meaning of the Act?

MR. SWERDLOW: No. No, we are abiding with the prior stipulation,

[Tr. p. 191.] TRIAL EXAMINER: Then there is no objection with that understanding?

MR. GOLDMAN: No objection.

TRIAL EXAMINER: Without objection, Respondent's Exhibit No. 2 is received in evidence.

(Document above referred to marked Respondent's Exhibit No. 2 for identification was received in evidence.)

Q (By Mr. Swerdlow) Now, with reference to the organizational chart on Respondent's Exhibit 2, could you tell me what Mr. King's duties are?

A Mr. King is a member of the board of directors, and he is the vice-president of the corporation. His duties encompass the entire operations of the company, although he is stationed in San Francisco and has particular reference to the duties as to the operations in the Pacific Coast Division. He was formerly the Division Manager of the Pacific Coast Division.

Q To the best of your ability, describe what his specific duties are and how they relate to the West Coast Division?

A Well, he has the overall supervision of the Division Manager's, the Division Manager's Office of the Pacific Coast Division. The Division Manager reports to the president of the corporation, but through the vice-president, Mr. King.

Q What sort of matters would Mr. King become involved in?

A He becomes involved in all operational matters of plant [Tr. p. 192.] security, investigations, and all of the other operations of the company. Now, he becomes involved in personnel, the managerial personnel, employment of staff members, managers and assistant managers, sales managers, that sort of thing.

Q What, if any, responsibility does he have with respect to employees' relations and labor relations.

A Well, he is the channel of the company policy from the board of directors to the division manager.

Q And Mr. Cronin, what does he do?

A Mr. James J. Cronin is the Division Manager and he has the overall supervision at the Seattle office, the Portland office, the Los Angeles Branch Office. We use the term "branch office" for all these offices. The Salt Lake City Office; the Honolulu Office; and the San Francisco.

Q And with respect to these offices, what are his responsibilities, what sort of matters would he become involved in?

A He becomes involved in assisting the managers to meet the requirements of clients; he becomes involved in the organization of the branch offices, sub-offices, etc., and he becomes involved in our sales programs and our general operation programs, not the details, perhaps, of the selling of a particular job or the operation of a particular guard job, but the general policies which we must follow in this operation.

Q In respect to labor relations, employee treatment, [Tr. p. 193.] employee benefits, and matters like that, what role would he—

A He's consultative. He has a consultative role. If I have a labor problem, I consult with him on it. I might—I believe you mentioned wages there, did you?

Q Anything in which he becomes involved.

A I might set up a wage scale and discuss the applicability of a certain scale to the area, taking into consideration the overhead and operational costs and plant charges, etc. He interests himself, naturally, in the profits that my office makes and he discusses with me the plans he formulates to operate a profitable operation.

Q Does he have a policy making job?

A Yes, I think it's fair to say that he has a policy making job. He recommends policies to higher headquarters, all of us.

Q When you say "we", who are you talking about?

A I am talking about branch managers and the division managers.

Q What sort of matters would he participate in on a policy level?

A He would participate in the terms of union agreements. He would participate in a pricing decision, and not necessarily an individual pricing situation but an overall pricing situation in the area.

Q What about with respect to employee benefits, does he have any policy or any role that he plays in that?

[Tr. p. 194.] A Yes, he was in consultation with myself and we discussed health insurance programs, and I think you might say we had never had a health insurance program until he advanced to higher headquarters the desire that we have one, the feeling that we should have one.

Q What about other terms and conditions of employment, does he have any role, any policy making role with respect to that?

A Well, I think that he would have a policy making role in qualifications of employees.

Q Now, what's your area of responsibility?

A I am the manager of the Los Angeles Area, which encompasses all of Southern California south of the northern boundary of San Luis Obispo County, going directly east to the Nevada Border, I have Clark County in Nevada, and the entire State of Arizona south of the Mexican border is my southern boundary.

Q Now, on Respondent's Exhibit 2, there are boxes marked "Anaheim sub-office", "San Diego sub-office", "Phoenix sub-office", with lines directed to the box where your name appears; what does that mean?

A That means that I have the operational responsibility for those offices and the sub-offices' managers report to me on the operations in that area.

Q Where is the Phoenix sub-office located?

[Tr. p. 195.] A It's in Phoenix, Arizona, on North Central Avenue.

Q And the San Diego office?

A The San Diego office is on 19th Street in San Diego.

TRIAL EXAMINER: I don't think he is particularly concerned about the street address, just the State.

Q (By Mr. Swerdlow) The Anaheim office?

A The Anaheim office is in Anaheim.

Q Well, what's the function of the sub-offices?

A The sub-office, it's function is, the manager of the sub-office controls the supervision, he supervises the supervision, and sometimes ever the job of the guard operations in his area. He employs the guards, he maintains the Burns policy in the operations on those jobs, and he has the overall supervision of the jobs in his area.

MR. SWERDLOW: Will you mark this for identification? This will be Respondent's next in number for identification.

(Document referred to above was marked Respondent's Exhibit No. 3 for identification.)

Q (By Mr. Swerdlow) Now, I am going to show you a copy of Respondent's Exhibit No. 3; now, the only difference between this and the actual copy is the hash marks and the Anaheim area marked red. First tell me, who prepared Respondent's Exhibit No. 3?

A I prepared Respondent's Exhibit No. 3 myself—

Q And—

[Tr. p. 196.] A —I ran out of red ink, though.

Q (laughs) What does Respondent's No. 3 indicate?

A Respondent's No. 3 indicates the area in the Metropolitan Los Angeles area, the responsibilities of the various offices and sub-offices; in other words, it shows the Anaheim sub-office area, which is Orange County, it shows a part of the Los Angeles office area, which is Los Angeles County and north and west of Los Angeles County, Ventura County, and it shows the major portions of Riverside County and San Bernardino County, and that part of Los Angeles County that is under the operational control of the Ontario sub-office.

Q Now, there is a blue circle?

A That happens to show the Ontario City where the Ontario office is located, to draw our attention to the Ontario.

Q Now, there is a dark line down the middle, I think this is the—

A That is the eastern border of the Ontario—pardon me, the western border of the Ontario sub-office.

Q And everything—

A Everything east of that line and north of that line, which is a line in red, black and blue, to show the difference between that and the county lines, to show the western border and southern border of the Ontario sub-office jurisdiction.

Q How is the jurisdiction of the L. A. sub-office?

A In the L.A. sub-office, is divided by a red, black and [Tr. p. 197.] blue line which divides it from the Ontario office and a blue and red line which divides it from the Anaheim office, with the Anaheim sub-office designated by squares overlaid over the map.

Q I see, and in which direction from the Ontario—

TRIAL EXAMINER: Let the record that the original of Respondent's No. 3 doesn't have those squares, but it's plain to—oh, I see, the blue squares. (witness indicated)

A I said, I ran out of red ink.

TRIAL EXAMINER: All right, fine.

Q (By Mr. Swerdlow) And from the Ontario sub-office area, what direction do you go to the L.A. sub-office area?

A From the Ontario, you go straight west to the L.A. sub-office area.

Q Now, is the L. A. County line indicated here?

A The L. A. County line is indicated on the map, although it may not be—

TRIAL EXAMINER: Well, let's see, here are Los Angeles and San Bernardino.

THE WITNESS: That's right, that is the L. A. County line. That line is indicated, yes.

Q The L. A. County line is indicated on these?

A Well, it's indicated on all of them; it just happens to be heavier on this.

Q Fine; now does part of the terrirtory of the Los Angeles [Tr. p. 198.] sub-office fall in—well, let me ask a question, is all of the territory of the Los Angeles sub-office in Los Angeles County in the Los Angeles City area?

A No, we—

MR. GREGORY: Won't the exhibit speak for itself, the document, Mr. Trial Examiner?

TRIAL EXAMINER: Well, there may be an explanation for it is in order, I don't know, I hope we are not going to waste an awful lot of time on this.

MR. SWERDLOW: I'm just about finished.

THE WITNESS: The Los Angeles office has jurisdiction in Kern County and in Ventura County, the counties to the north and the west.

Q (By Mr. Swerdlow) What about to the east?

A To the east, the Los Angeles sub-office jurisdiction does not go to the eastern boundary of the Los Angeles County line.

Q What about the Ontario office?

A The Ontario office contains a portion of the Los Angeles area.

Q Los Angeles County?

A Los Angeles County. The Ontario office contains a portion of Los Angeles County.

TRIAL EXAMINER: Have you concluded with this map?

MR. SWERDLOW: Yes, I offer it in evidence as Respondent's No. 3.

[Tr. p. 199.] TRIAL EXAMINER: Any objections?

MR. GOLDMAN: Well, just one point of clarification. On this chart, you have Los Angeles Branch; you are referring to something in the Los Angeles sub-office; is there a Los Angeles sub-office on this chart?

THE WITNESS: There is a section of the Los Angeles Branch office that has the same function as a sub-office, that's the operational part of the branch office, as distinct from the administrative part that has jurisdiction over the sub-office.

TRIAL EXAMINER: There is not only a Los Angeles Branch Office; there is also a Los Angeles sub-office?

THE WITNESS: Within the Los Angeles Branch Office.

TRIAL EXAMINER: Within the Los Angeles Branch Office; it is under the Los Angeles Branch Office the same as San Diego, Phoenix, etc.?

THE WITNESS: Exactly.

TRIAL EXAMINER: Without objection, it is received in evidence.

(Document above-referred to marked Respondent's Exhibit No. 3 for identification was received in evidence.)

[Tr. p. 201.]

ARTHUR C. POTTER

was recalled as a witness by and on behalf of the General Counsel and, having been previously duly sworn, was examined and testified further as follows:

TRIAL EXAMINER: Mr. Potter, would you please be seated. You have already been duly sworn, and you recognize that you are still under oath?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

Q (By Mr. Goldman) Where is the Wackenhut Corporation incorporated?

A It is incorporated in the State of Florida.

Q What services does the Wackenhut Corporation perform?

A General security services involving furnishing of [Tr. p. 202.] uniformed guards, performing investigations, conducting surveys, and we also perform functions in connection with alarm and electronics work.

TRIAL EXAMINER: General plant protection?

THE WITNESS: Yes.

Q (By Mr. Goldman) Where do you perform these services?

A In the majority of the States of the United States and in portions of South America.

Q Do you also perform them in Puerto Rico?

A Yes.

Q (By Mr. Goldman) In the course and conduct of Wackenhut's business operations, what is the, approximately, the annual gross volume of business in dollar amount of Wackenhut?

THE WITNESS: The gross volume of business for last year was, as I recall, in the neighborhood of 27 million dollars.

TRIAL EXAMINER: About approximately how much is done outside the State of Florida?

THE WITNESS: I would not have any knowledge of that.

[Tr. p. 203.] TRIAL EXAMINER: Would you say whether it was or was not in excess of fifty thousand dollars?

THE WITNESS: I would say it's in excess of fifty thousand dollars.

TRIAL EXAMINER: Done outside the State of Florida?

THE WITNESS: Yes, sir.

Q (By Mr. Goldman) Approximately how much of that is done in the State of California?

A Over $50,000.00.

Q In the State of California?

A Grossed in the State of California.

TRIAL EXAMINER: Over $50,000.00 developed and grossed in the State of California?

THE WITNESS: Yes, sir.

MR. GOLDMAN: I have no further questions.

TRIAL EXAMINER: Any cross examination?

MR. GREGORY: I have one. Does Wackenhut supply services to the United States Government Agencies?

THE WITNESS: Yes.

MR. GREGORY: What agencies?

THE WITNESS: To the Atomic Energy Commission and N.A.S.A.

MR. GREGORY: Are those facilities located throughout the United States?

THE WITNESS: In various areas of the United States, yes, sir.

[Tr. p. 204.] MR. GREGORY: But not all are located in Florida, is that correct?

THE WITNESS: No.

[Tr. p. 205.] J. FORREST INGLE

was recalled as a witness by and on behalf of the Respondent and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION (continued)

Q (By Mr. Swerdlow) Mr. Ingle, in your testimony earlier this morning, you described the general operation of the Los Angeles Branch; would you describe specifically what your duties are in this branch?

A My duties are the general administration of the branch, employment of staff personnel, the setting of working conditions on the job, the supervision of the employment and training of guards, setting of the wages, industrial relations, negotiations, and the general overall supervision of all of our operations.

Q In what territory?

TRIAL EXAMINER: In the Los Angeles Branch.

THE WITNESS: That territory which is Southern California, south side of Nevada and Arizona.

Q (By Mr. Swerdlow) You have the Ontario sub-office on Respondent's No. 2, which I will give a copy back to you [Tr. p. 206.] now; it is indicated the Ontario sub-office, Mr. Parks is manager?

A Ralph E. Parks is now manager.

Q Would you describe generally what the responsibility is in the Ontario sub-office?

A The Ontario sub-office has the local supervision of all of our operations in San Bernardino, Riverside County, and the eastern portion of Los Angeles County. It has the establishment of our personnel on the guard jobs there, maintenance of our operational policy on the guard jobs.

Q Now, does this office establish policy?

A No, this office does not establish policy, it might recommend some to me, but it doesn't establish it.

Q Now, what is Mr. Parks responsibility in the sub-office?

A Mr. Parks responsibility is to coordinate the endeavors of the field supervisors in the area to see that they keep the jobs manned and the posts filled on the jobs, that the level of operations meets the standards of the Burns' established policy.

Q With respect to employee actions, that you discipline, granting leave of absence, what is Mr. Parks' responsibility?

MR. GREGORY: Objection, leading.

TRIAL EXAMINER: Overruled.

THE WITNESS: Mr. Parks has the authority and responsibility for disciplinary actions, employment, discharge and [Tr. p. 207.] vacations earned according to policy.

Q Now, does he establish policy with regard to any of these matters in the Ontario area?

A No, I establish that policy.

Q Now, with respect to discharge, does he have to report, does he or does he not have to report to you before taking disciplinary action?

A No, he doesn't report to me; he reports disciplinary actions, but he doesn't report them before the fact, he reports them after the fact.

Q With respect to promotions, what is his authority?

A He has authority to promote up to the grade of field supervisor in those areas if vacancies exist.

Q Now, does he participate in the hiring of employees?

A Oh, yes, he would certainly participate in the hiring of anyone of the level of the supervisor in the area. He has the overall responsibility for employing the guards; however, he may not physically accomplish that himself. It may be accomplished under his direction.

Q Now, confining ourselves to the area covered by the Anaheim office, Los Angeles—pardon me, sub-office, Los Angeles sub-office, and Ontario sub-office, how many guards are there in that area.

A I have them written down on a slip of paper which I handed you. I don't exactly recall, but it's somewhat less [Tr. p. 208.] than 800, between seven and eight hundred guards.

Q Now, in this area, I want to take this sub-office by sub-office, how many contracts for providing guard service does Burns have in the Los Angeles area?

A Approximately 130.

Q How many contracts does it have in the Ontario area?

A I believe it's exactly, as of last week when I looked it up, 31, that's approximately, somewhat over 30.

Q And what about in the Anaheim area?

A I think probably 17.

Q Now, in what area is the Lockheed job?

A That is in the Ontario sub-office area.

Q Now, in that office, on the chart, indicates George Goddard, Operations Supervisor, that's on Respondent's No. 2; would you describe Mr. Goddard's duties?

A Mr. Goddard is operations supervisor, and he is the assistant to the manager, he is the principal assistant to the manager, and has supervision over the field supervisors. It's his responsibility to insure that the field supervisors and where job supervisors exist, that the job supervisor has sufficient man power to man their jobs, that they schedule the man power to fill the posts, that the men are properly uniformed and perform according to Burns' policy on the job.

Q Now, how many jobs does Mr. Goddard supervise?

A Well, he, in effect, would have opportunity and [Tr. p. 209.] responsibility to supervise all of the jobs in the Ontario area, which is a figure over 30. Of course, he details the supervision of some of the jobs to the field supervisors and he may not directly concern himself with one or two particular jobs, that he knows from reports by the field supervisors is being handled properly and received no complaints from the client, but the job is supervised under his general direction.

Q And about what percentage of Mr. Goddard's time is spent with regard to the Lockheed job?

A I would say at least one-third of his time is spent with the Lockheed job, it being the principal, it being the largest job in his area.

Q Now, does he spend time with jobs that are located in Los Angeles County?

A Oh, yes, he spends considerable time with jobs—if he spends one-third, and I estimate it one-third on the Ontario job, he would probably spend at least that much, perhaps a little more on the job in the eastern part of Los Angeles County because of the nature of those jobs.

Q Now, underneath Major Goddard—or Mr. Goddard, in the Ontario sub-office, what is the title of the next level of supervisory personnel?

A The next level of supervisory personnel is field supervisor, of which there are three in that sub-office. [Tr. p. 210.] Q What are their functions?

A Their functions are to visit each job in their assigned area, to observe the performance of the guards on the job, to insure company standards of service are maintained.

Q Now, does Mr. Goddard have any authority with respect to firing employees?

A Yes, Mr. Goddard concerns himself with hiring in the Ontario area; he is in charge of hiring guard employees in the Ontario area.

Q When you say the Ontario—

A I mean the Ontario sub-office area.

Q Now, what about with respect to firing of employees; does Mr. Goddard have any authority with respect to that?

A Oh, yes, if he, if it comes to his attention, of misbehavior of a guard on his post, he not only has the authority but is required to take immediate action to remove the guard and discipline him by termination or by other action, by suspension or whatever.

Q Now, what about the area supervisors; what is the name of the area supervisor assigned to cover the Lockheed job?

A The Lockheed job is not specifically covered by one area supervisor for the reason that it is specifically covered by a job supervisor, and for the further reason that the area supervisors work in shifts, and any area supervisor who may be on duty might have the necessity of looking into any [Tr. p. 211.] situation that arises on the Lockheed job.

Q And when an area supervisor is on duty, does he pay attention to other jobs besides Lockheed?

A Oh, yes, pays attention to all the jobs; to explain that to you, we have a communications system where every job, a guard on every job calls in to a central office once per hour. If there is anything wrong on the job, if there is any guard that has not shown up, or if there is any matter that needs the attention of the supervisor, it would come to the supervisor over a radio network from the telephone office.

Q Now, who are the area supervisors?

A We have one area, Captain Kretzlow, Holzman, and there is one area supervisor job vacant at this particular moment; Lieutenant Saxon just resigned; his predecessor was Lieutenant Smith.

Q Now, let me ask you, just when was the Ontario sub-office established?

A Established in January.

Q Of what year?

A 1967.

Q Was this before or after you bid for the Lockheed job?

A Before we bid for the Lockheed job.

Q Now, Captain Kretzlow, how long has he been, approximately how long has he been a Burns' employee? [Tr. p. 212.] A I would say he has been a Burns' employee approximately four years.

Q Approximately how long has he been performing his present job?

A He's been field supervisor approximately two years.

Q What about Lieutenant Holzman, how long has he been employed by the Burns Company?

A Frankly, I can't give you that information. He has been a supervisor approximately eight months. Before that he was a guard, and I think he was a guard something like a year and a half, but that is subject to correction.

Q He was supervisor eight months, from when to when?

TRIAL EXAMINER: Eight months going back from today.

THE WITNESS: From eight months ago.

Q And Lieutenant Holzman?

A I think you just mentioned him.

Q Yes, I just asked you about him. What about Mr. Parks, how long has he been employed by Burns?

A Mr. Parks has been employed by the Burns Agency approximately a year. Before that, he was employed by the company that we acquired by purchase.

Q What about Mr. Goddard, how long has he been employed by Burns?

A Mr. Goddard had been supervisor for approximately three years; before that, he was a guard for us for approximately [Tr. p. 213.] one to two years.

Q How long has he been in his present job?

A In his present job as operations manager, he has been since we established the Ontario sub-office in January.

Q Now, there is one opening for an area supervisor.

A Yes.

Q Do you have any plans to fill that job?

TRIAL EXAMINER: What difference does it possibly make, are you going to ask the names of the applicants, too? What difference does it make?

MR. SWERDLOW: It does make a difference.

TRIAL EXAMINER: All right. Go ahead.

THE WITNESS: We certainly intend to fill the vacancy, and Mr. Parks is actively examining the job supervisors in the area of promotion.

Q (By Mr. Swerdlow) In the area?

A In the area, Ontario sub-office.

Q Now, who is the highest supervisor on the job at Lockheed?

A Captain Bagby is the Job Supervisor.

Q How long has he been a Burns' employee?

A Since July 1, 1967.

Q Where did he work before that?

A He worked on that job for Wackenhut as sergeant.

Q What was his present rank?

[Tr. p. 214.] A Captain.

Q Are there any other supervisors, job supervisors, on the Lockheed job, including the sergeant as being a supervisor?

A He is the only resident supervisor on the job.

Q Now, what is his function?

A His function is to schedule the guards on his job, to see that every post is filled, to see that the guards perform in accordance with Burns' standards, and to confer with the client daily to see that we are performing according to their satisfaction.

Q Does he have authority to hire employees?

A No, he requisitions employees from the Ontario office; however, if he had the opportunity to hire a per-

son, he would send him to the sub-offices to be hired. His recommendations would be accepted.

Q On hiring?

A Yes, on hiring.

Q What about on discharging employees; does he have authority to discharge?

A Certainly, if a guard performs an act that is proven to be subject to discharge, it's expected that Captain Bagby would take immediate action and report it to the office, the Burns' office, now.

Q When is the action effective?

[Tr. p. 215.] A Captain Bagby is authorized to take a guard off duty immediately.

Q Is he authorized to discharge a guard if need be?

A Yes, sir.

Q Now, the employees, with respect to the employees in the Los Angeles Branch area, do they have the same or different benefits, with respect to vacations—

MR. GREGORY: Object, calls for conclusion.

TRIAL EXAMINER: Overruled.

THE WITNESS: All the guards under the jurisdiction of the Los Angeles Branch office, except the guards in Arizona, have the same pay scales, vacations, working conditions, fringe benefits.

Q (By Mr. Swerdlow) What about hospitalization?

A All guards in the employ of the agency for more than 12 months are under the hospitalization plan.

Q The same plan?

A The same for all, the same terms.

Q Now, what about disciplinary procedure?

A Disciplinary procedures are the same.

Q Where is the basic recruiting of guards handled?

A The basic recruiting is handled at the Los Angeles Branch office personnel offices there, and recruiters there, and we advertise continuously for guards, and they come to our office to make application. They also, however, the [Tr. p. 216.] ad directs them also to our Anaheim office and to our Ontario office, so they are hired at both these offices at the same time. Our recruiters, our outside recruiters work outside of the Los Angeles Branch office, but they travel to the sub-office areas, to State Employment

offices in the area, to recruit sufficient numbers of guards so that we can have enough guards on hand.

Q Is there a personnel manager in your area?

A Yes, there is a personnel manager in the Los Angeles Branch office.

Q What are his functions?

A To keep the personnel records, to make the background investigations of guard applicants, he oversees guard training division. We have class room training as part of the employment process. And he also has duty as terminal interviewer with guards who are terminated for any reason or resignation or disciplinary reasons.

Q Guards from what area are we talking about?

A We are talking about guards from all areas under the Los Angeles Branch office.

Q Where are the personnel records for those guards kept?

A Master personnel records in the Los Angeles Branch office; however, for the guards in the Los Angeles, duplicate personnel jackets, copies of documents kept there.

Q Are personnel records kept on the Lockheed job?

[Tr. p. 217.] A No, not on the Lockheed job, personnel records for the Lockheed job are kept at the Ontario suboffice, and master copies are in the Los Angeles Branch Office.

Q Now, on some of the jobs, it is necessary for employees to get security clearance?

A Yes.

Q In what office are the security clearances processed?

A Under the general direction of the Director of Personnel, manager of personnel, personnel manager in the Los Angeles office. We have a security officer who is charged with the preparation of the forms. The guards are furnished a form to complete in their own handwriting by their job supervisor or by their area supervisor who collects the completed forms and sends them into the Los Angeles office where they are typed, the voluminous number of copies that the federal government requires, returned to the area supervisor or field supervisor to obtain the signature of the guards and to obtain the necessary fingerprint cards that go with them. They are

then return to Los Angeles office and forwarded to the contract—defense management contract office in Dayton, Ohio, where they are processed by the federal government.

Q This is the process for guards in what area?

A All areas except the Phoenix sub-office. The Phoenix sub-office, they handle all the processing I just described in their own area.

[Tr. p. 218.] Q Now, where are the uniforms kept for the employees, for the guard employees in the Los Angeles Branch Office?

A They are purchased by the personnel office, and in the Los Angeles area and nearby areas of Orange County and San Bernardino and Riverside Counties a guard employee is sent to our uniform supplier on Main Street. They can go there and receive new uniforms when they are sent by the personnel office. We keep a supply in our office, however. In case of new hires, we can outfit them with uniforms.

Q And when you say every office?

A I mean the branch office and sub-offices.

Q Are there uniforms kept on the Lockheed job?

A No, there are no uniforms kept on the Lockheed job. The uniforms are kept at the Lockheed International Office, Terminal Building, the sub-office, which is five minutes from the Lockheed job.

Q Now, where are supplies that are used on the job other than uniforms?

A Purchased by the Los Angeles Branch office and furnished on requisition to the sub-offices, to a job by the job supervisor. A remote job like, for example, in Blythe, we would furnish supplies directly to a job.

Q Now, is there any clerical and office work in connection with the Lockheed job?

A Only prepartaion of time sheets, assume you would call [Tr. p. 219.] clerical, done by Captain Bagby.

Q Where is that done?

A On the job.

Q Where are the employees paid from, the employees of the Los Angeles Branch area paid from?

A Paid from the Los Angeles Branch office, prepared in the office, the checks are, and mailed to the homes of

the guards. There are exceptions to that. Sometimes they are mailed to the job supervisors who distributes them on the job.

Q Do the employees, does Burns have an employees' hand book?

A Burns does have an employee hand book.

MR. SWERDLOW: Would you please mark that Respondent's 4.

(Document above-referred to marked Respondent's Exhibit No. 4 for identification.)

TRIAL EXAMINER: Excuse me for a moment. It just happens to be on my mind, Mr. Goldman, is there in evidence the contract between Respondent Burns and Lockheed?

MR. GOLDMAN: Burns and Lockheed?

TRIAL EXAMINER: I believe that was in evidence?

MR. GOLDMAN: Yes.

TRIAL EXAMINER: Is there in evidence the contract between Burns and the union?

MR. GOLDMAN: Between Burns and the union? There is no contract betwen Burns and American Federation of Guards right [Tr. p. 220.] now.

TRIAL EXAMINER: What about UPG, there is no contract?

MR. GOLDMAN: There was a contract between Wackenhut and United Plant Guard Workers, which is in evidence, in stipulation. There has been no contract between Burns and United Plant Guard Workers, nor for that matter, any contract with American Federation of Guards.

MR. SWERDLOW: Covering this facility.

TRIAL EXAMINER: That's what I mean, Lockheed.

Q (By Mr. Swerdlow) I am going to hand you a copy of Respondent's Exhibit No. 4.

TRIAL EXAMINER: That's a handbook for guards, isn't it?

THE WITNESS: That is a "Handbook for Guards," Burns Detective Agency.

Q (By Mr. Swerdlow) How long has that particular handbook been used?

A Since 1962.

Q Who gets copies of this handbook?

A Each guard must be given a copy of this handbook upon employment, and it is supposed to be retained in his possession on the job as long as he is employed.

Q And were copies of the handbook given to employees in the Los Angeles Branch area?

A They certainly are; they are given to every guard employee.

[Tr. p. 221.] Q What's the purpose of the handbook and how is it used?

A This handbook is the guard's general orders. We consider that the two types of orders, the general orders that apply to all guards and special orders that apply to a job. The handbooks for guards is equal to the general orders for the military.

MR. SWERDLOW: I move Respondent's 4 to be entered into evidence.

TRIAL EXAMINER: All right. Any objections?

MR. GOLDMAN: No.

MR. GREGORY: No, sir.

TRIAL EXAMINER: Without objection, it is received in evidence.

(Document above-referred to marked Respondent's Exhibit No. 4 for identification was received in evidence.)

Q (By Mr. Swerdlow) Does Burns transfer employees from one job to another on either a temporary or permanent basis?

A Daily, transfers are made daily.

Q Let's talk for a minute about temporary transfers; how frequent do temporary transfers take place in the Los Angeles Branch area, of Burns guards from one job to another job?

A Well, there are several made daily. I would say that there must be probably at least one hundred weekly, of a temporary transfer, temporary transfers being transfers to [Tr. p. 222.] a post, maybe a guard hasn't show up, is sick.

Q Well, what about permanent transfers of employees; about how many permanent transfers of employees,

transferring an employee from one Burns' job to another Burns' job?

A Oh, we have at least one a day, and, many times, more than one a day. I would imagine we have five to six hundred a year of such transfers.

Q Now, do you transfer employees to or from top security jobs?

A Let's—may I make a statement concerning what we mean by top security. The federal government clears certain areas top secret, which is top security; as secret, which is secret; and confidential, which is of a secret nature. So, if we are referring to top secret as top security, the approximate requirements on the Ontario job of Lockheed Aircraft, are requirements of not more than five top secret men required. The rest of them are secret. We have many, many, jobs that require secret clearance, while we have only the one job at Lockheed that requires top secret clearance.

Q I see. Well, let me ask the question this way. Do you transfer people about secret jobs, from one secret job to another secret job?

A We have to make many transfers in secret jobs. Only persons who have had a secret—a security clearance to the level of secret can be assigned to a job requiring that, and [Tr. p. 223.] not all guards have it. It takes a time to get it. We have to train, we have to employ and train and keep on a non clearance job guards while we are getting their clearances, which, of course, was our purpose when we started out, to transfer them to a secret cleared job. Practically any guard who is on a secret cleared job has been transferred from another job.

Q How many secret cleared jobs are there in the Los Angeles Branch area?

A Secret cleared men, about how many requirements for secret cleared men? We have a requirement for about approximately 225 secret cleared men.

Q Now, in making transfers from one Burns job to another, what consideration is given, if any, to the boundarylines that were indicated on Respondent's Number 3 between the Los Angeles office and the Anaheim office or between any of the offices?

A Given consideration to the boundary lines when transferring from one sub-office area to another, just simply because it's a sub-office area, no consideration is given. We are considering the comfort of the men. We consider his responsibilities, whether he can move or not. We consider the man more than we consider the location of the job. If the man can go where we have a requirement, then we send him. It's not unusual for us to send a man from Los Angeles to [Tr. p. 224.] Ontario or to Anaheim or to San Diego, for that matter.

Q The record indicates you transferred to date approximately 23 former Burns employees from other jobs to the Lockheed job; from where did these employees come?

A They came from various jobs in the eastern area of Los Angeles County, some from jobs in the city of Los Angeles, some from Orange County. We have 23 men there who have been transferred from other jobs, but we transferred more in and out than that figure shows.

Q Now, how far is the Lockheed job from the Los Angeles County line?

A Approximately nine miles from the nearest Los Angeles job; from the county line, probably six miles.

Q It's about nine miles from your nearest job?

A Right.

Q Now, did Burns recognize the American Federation of Guards as the bargaining representative for the employees of the Lockheed job?

A I did, yes.

Q And can you tell us when you recognized them?

A I believe it was the 29th day of June.

Q And where, or could you describe the circumstances regarding this recognition?

A Yes, the representative of the American Federation of Guards came to my office. He called me up and asked me if he [Tr. p. 225.] could come to see me, and I—

TRIAL EXAMINER: Who was this?

THE WITNESS: Mr. Ronald Wells. He was the business representative of the American Federation of Guards, and I believe he is secretary-treasurer.

Q (By Mr. Swerdlow) When did he call you?

A He called me the morning of the 29th of June and asked me if he could come around and see me. Bearing in mind that we have a contract with him for covering guards in the Los Angeles area, I see him frequently and told him to come on around.

MR. GREGORY: May I object to the witness' editorializing and ask that the answer be stricken?

TRIAL EXAMINER: The answer may remain; the objection is overruled.

You say you had contracts in the Los Angeles area; did you have one or more than one contract?

THE WITNESS: One.

TRIAL EXAMINER: One contract, covering all of your employees?

THE WITNESS: All the employees in the Los Angeles County.

TRIAL EXAMINER: And in the Los Angeles Branch or just Los Angeles County?

THE WITNESS: Los Angeles County.

[Tr. p. 226.] TRIAL EXAMINER: In Los Angeles County you had a contract?

THE WITNESS: That's right.

TRIAL EXAMINER: Did you have a contract in San Bernardino County?

THE WITNESS: No, sir.

TRIAL EXAMINER: Proceed, counsel.

Q (By Mr. Swerdlow) Will you continue describing what happened on the 29th of June. You told us about the phone call from Mr. Wells—

A Mr. Wells came to my office and presented to me 27 applications of guards or 27 applications completed by men he stated we had employed for work at the Lockheed Aircraft Services Company.

Q I am going to show you a copy of General Counsel's Exhibit No. 4, and you can tell me if that is the form of a pledge card that was shown to you by Mr. Wells?

A That's the form.

Q He showed you 27 pledge cards?

A 27 cards. I called the personnel offices and asked for the application forms, or asked for the personnel

records, to see if we had personnel records of the men who had purported to sign the forms and asked them to compare the signatures with the signatures on our applications, and I found that those forms were signed by the men that were purported to have signed them, that is, the signature compared with the [Tr. p. 227.] signature on the application. So, I said to Mr. Wells, "Do you have any more applications?" He said, "No, but I have approximately eight members that you are transferring to this job who have told me that you have assigned them to this job. They are already members and have been working in Los Angeles County." Which indicated that about 35 persons out of the expected 42 to be assigned there were already members of AFG or had signed a pledge card, and on that basis, I said to Mr. Wells, "I don't see that I can do anything except recognize it." And that is that.

Q (By Mr. Swerdlow) How many employees were there at the Lockheed job at the time?

A At the time we hadn't started to work, frankly, we were to start work the next day but one, in other words, two days later we were to start work, 1st of July, and we had an order to start with 42 men.

Q Now, those applications, what dates were they, were those people who were on the applications, they had been hired or were they not?

A They had been hired. They had been hired in that they had agreed to come to work and we had agreed to furnish them work.

Q Now, you heard the testimony here from General Counsel's witness?

A Yes.

[Tr. p. 228.] Q At the time you met with Mr. Wells, were you aware of the purported activity of Mr. New and Mr. Goddard?

MR. GREGORY: Objection—

THE WITNESS: I was aware that Mr. New and Mr. Goddard had been recruiting for the Lockheed job. I was aware that Mr. Foley had been at the Lockheed International Airport simply to organize the men. I wasn't aware of some of the statements such as were

made by the men. I wasn't aware that Mr. Foley had told the men that they had to join the union to work.

TRIAL EXAMINER: Did you give Mr. Foley permission to recruit on the job?

THE WITNESS: No, sir, because Mr. Foley didn't recruit on the job.

TRIAL EXAMINER: I see.

Q (By Mr. Swerdlow) Now, did Burns have a policy with respect to the rank of employee who was on a post that is covered for 24 hours?

A In any remote post that has 24 hours coverage, we always, on every job provide that the day man has the rank of a sergeant.

Q Do you know if Mr. Reitzel is working on such a post?

A It's my understanding that he is. I haven't been on his post, but it is my understanding that its away from, on the other side of the compound from the Captain's office.

[Tr. p. 229.] CROSS EXAMINATION

Q (By Mr. Goldman) Mr. Ingle, when Burns is about to bid on a contract for new guard services within your area, are you notified of this?

A Yes.

Q Do you play an active part in this?

A I sign the bid.

Q You sign the bid; do you attend bid conferences?

A Sometimes I do, and sometimes I don't.

Q In a job with a magnitude of 42 people involving top security clearance, do you normally attend such a pre-bid conference?

A I didn't attend this one. I don't think that there is such a thing as normally attending a conference of a job this size. This is an unusual job. It stands in a class by itself.

TRIAL EXAMINER: All right. You didn't attend this conference?

[Tr. p. 230.] THE WITNESS: I didn't attend.

Q (By Mr. Goldman) Who did attend this conference, this pre-bid conference?

THE WITNESS: The salesman in the area. His name is B. G. Ostling.

Q (By Mr. Goldman) Did Mr. Osling report directly to you?

A He reports directly to my assistant, and to me, as well.

Q Your assistant is Mr. New?

A No, not in this case. My assistant in sales is Mr. Cocher, C-O-C-H-E-R.

TRIAL EXAMINER: Who is Mr. New?

THE WITNESS: Mr. New is the operations manager of the Los Angeles sub-office, that's the part of the office that controls the guards in the Los Angeles County.

Q (By Mr. Goldman) A job of this size dollar volume, don't you usually take an active interest in this type job?

A Yes, sir.

[Tr. p. 231.] Q (By Mr. Goldman) Were you notified prior to your bid for the Lockheed job that the Lockheed, or the former Wackenhut guards were currently represented by the United Plant Guard Workers of America?

A This was the labor agreement? I was aware of that.

Q And that Wackenhut and the union had just gone through a Board certication to see that the employees were certified in an appropriate unit?

[Tr. p. 232.] A I was aware of contract. I was made aware of it.

Q Were you aware of this when Mr. Wells came to your office and demanded recognition?

A I was aware of that sometime previously.

TRIAL EXAMINER: You were aware of it before the bid was made, weren't you?

THE WITNESS: Yes, I was aware of it before the bidding.

Q (Mr. Goldman) Now, in regard to your testimony in relation ot the uniform policies regarding the Los Angeles Branch Office, you made mention that the Phoenix sub-office in Arizona does not have the same uniform policy in relation to wages, I believe?

A They do not.

Q Is there anything else in that sub-office that differs from the other sub-offices?

A They may not have the same fringe benefits or same wages.

Q Now, when a person transfers from the Phoenix sub-office to one of the other sub-offices within the Los Angeles Branch, what wage rate is he getting?

A The wage rate which applies to the area which he transferred to.

[Tr. p. 233.] Q When Burns took over the job at Lockheed, was there any understanding between Burns and Lockheed that Burns would hire or retain all the former Wackenhut guards?

A No, sir.

Q Was there any policy on your part to try to hire all, the substantial number of the Wackenhut guards because of their secret clearance?

A Yes, was the plan; that is the plan sometimes for that.

Q The plan in this case was to try to hire as many of the Wackenhut guards that had secret and top secret clearances as would come over?

MR. SWERDLOW: I object, that's repetitive.

TRIAL EXAMINER: Overruled.

THE WITNESS: As many as we needed.

Q (By Mr. Goldman) And when did you determine this need?

A We determined the need early in June when we started examining our records to see how many men we could conveniently [Tr. p. 234.] assign there with secret clearances from other jobs.

TRIAL EXAMINER: You did agree, did you not, to recognize the American Federation of Guards, right, on June 29?

THE WITNESS: I did, sir.

TRIAL EXAMINER: All right, as the representative of what employees?

THE WITNESS: As the representative of the employees of Lockheed Aircraft Service.

TRIAL EXAMINER: But you never negotiated a contract?

THE WITNESS: Haven't negotiated.
TRIAL EXAMINER: Have you bargained?
THE WITNESS: I have not bargained. May I say that I was told that I recognized them in error.

[Tr. p. 239.] (Document above-referred to marked General Counsel's Exhibit No. 6 for identification was received in evidence.)

[Tr. p. 242.] REDIRECT EXAMINATION

Q (By Mr. Swerdlow) Now, when you met with Mr. Wells, was there any discussion as to the terms and conditions as that would be applied to the employees at Lockheed?

A He had asked for a bargaining meeting. I reported that fact to my higher headquarters and was told not to meet in bargaining without further notice, that it was under consideration.

MR. SWERDLOW: I have no further questions.
TRIAL EXAMINER: All right. Nothing further?
MR. GOLDMAN: Nothing further.
MR. GREGORY: Just one, if I may.

RECROSS EXAMINATION

Q (By Mr. Gregory) Mr. Ingle, you testified earlier you had no discussion with Mr. Wells about negotiations; now, you tell us he did ask you to agree to bargain with him, is that right?

A He suggested that we meet later for bargaining. I had no negotiations with him.

Q Did he make a demand upon you that you apply the contract that has been identified as General Counsel's Exhibit No. 6 to the Lockheed facility?

[Tr. p. 243.] A I don't know if he made a demand; he mentioned that he would like to extend that contract.

Q Do you know whether or not the employees at the Lockheed facility were asked to ratify an agreement, being General Counsel's Exhibit No. 6 for that facility?

A I have heard so, I know nothing about it.

Q Did you also hear that the employees overwhelmingly rejected that contract?

THE WITNESS: I have no details about this.

Q (By Mr. Gregory) Do you know whether or not they rejected it?

A I understand so.

Q Can you tell us why you placed employee wages at Lockheed at $1.60 an hour and subsequently raised them to $1.75 an hour and then paid wages retroactively until July 6?

A Yes.

Q Why did that happen?

A Because when we took over the contract, we decided that we would not allow the employees to lose anything on their present wages. It was represented to me that they were receiving $1.60 an hour, so I said we would pay them $1.60 an hour. It was later represented to me that they would receive $1.75 an hour, and for economic reasons I raised them to $1.75 an hour.

[Tr. p. 244.] Q And is it your testimony that it was a mistake then that they were paid $1.60?

A No, it was not a mistake—

Q It was a misunderstanding you did that?

A It was a misunderstanding.

Q The filing of the charges in this matter by the union, you had no part in it?

A Certainly not.

GENERAL COUNSEL'S EXHIBIT No. 1(e)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

COMPLAINT AND NOTICE OF HEARING

It having been charged by International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162, herein called UPGWA, that The William J. Burns International Detective Agency, Inc., herein called Burns, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director, pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, Series 8, as amended, hereby issues this Complaint and Notice of Hearing, and alleges as follows:

1. (a) The original charge was filed by UPGWA on July 24, 1967, and a copy was served on Respondent by registered mail on July 24, 1967.

(b) The amended charge was filed by UPGWA on August 1, 1967, and copies were served on Respondent and on American Federation of [illegible]rds, Local 1, herein called AFG, by registered mail on August 1, 1967.

2. (a) Respondent is, and has been at all times material herein, a New York corporation with offices in various states of the United States, including an office at Los Angeles, California, where it is engaged in providing protective, guard, and detective services to business firms throughout the United States.

(b) In the course and conduct of its business operations, Respondent's Los Angeles office enjoys an annual volume of business in excess of $500,000, annually performs services valued in excess of $50,000 for firms outside the State of California, and annually performs services valued in excess of $50,000 for firms in the Los Angeles, California, area, each of which annually ships products valued in excess of $50,000 directly outside the State of California.

(c) The Wackenhut Corporation, herein called Wackenhut, is a Florida corporation engaged in plant protection and/or security services for firms located throughout the United States. In the course and conduct of its business operations, Wackenhut has an annual gross volume of business in excess of $500,000, and it annually performs services valued in excess of $50,000, outside the State of Florida.

3. Respondent and Wackenhut each is, and at all times material herein has been, an employer engaged in commerce and in a business affecting commerce, within the meaning of Section 2(6) and (7) of the Act.

4. The UPGWA and AFG each is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. (a) Wackenhut, prior to July 1, 1967, performed plant protection and/or security services for the Lockheed Aircraft Service Company, Ontario International Airport, herein called Lockheed, located in Ontario, California.

(b) Since on or about July 1, 1967, Wackenhut has ceased to perform the plant protection services for

Lockheed, described above, and since on or about July 1, 1967, and at all times material herein, Respondent has performed said plant protection services for Lockheed at Lockheed's Ontario, California, plant, and has been engaged in substantially the same business operations formerly engaged in by Wackenhut, described above, and has employed substantially the same employees and supervisors as had been employed by Wackenhut. The Respondent's operations at Lockheed in Ontario, California, are the only operations involved in this proceeding.

(c) Respondent is, and has been since on or about July 1, 1967, the successor to Wackenhut in its operations described above.

6. At all times material herein, the following-named persons occupied positions set opposite their respective names and have been, and are now, agents of the Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

J. F. Ingles	— Los Angeles Division Manager
W. C. New	— Assistant Manager, Plant Protection Department
_____ Goddard	— Guard Major
Owen Bagby	— Guard Captain
_____ Smith	— Guard Lieutenant
_____ Kietzlow	— Guard Captain

7. At all times material herein, at least until on or about June 30, 1967, all full-time and regular part-time employees of Wackenhut performing plant protection duties as determined in Section 9(b)(3) of the Act at the Lockheed Aircraft Service Company, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

8. On or about February 28, 1967, a majority of the employees of Wackenhut, in the unit described above in

paragraph 7, by a secret ballot election conducted under the supervision of the Regional Director for the Thirty-first Region of the National Labor Relations Board, designated and selected the UPGWA as their representative for the purposes of collective bargaining with Wackenhut, and on or about March 8, 1967, said Regional Director certified the UPGWA as the exclusive collective-bargaining representative of the employees in said unit.

9. On or about April 29, 1967, Wackenhut and UPGWA entered into a collective-bargaining agreement, effective through April 28, 1970, and from year to year thereafter, if not amended, modified, or terminated, covering wages, hours, and working conditions of the employees in the unit described in paragraph 7 above.

10. Since on or about July 1, 1967, all full-time and regular part-time employees of the Respondent, performing plant protection duties as determined in Section 9 (b) (3) of the Act, at the Lockheed Aircraft Service Company, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act, have constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

11. Since on or about July 1, 1967, the UPGWA has represented, and continues to represent, a majority of Respondent's employees in the unit described in paragraph 10 above, and, by virtue of Section 9(a) of the Act, is now, and has been at all times material herein, the exclusive representative of all employees in the said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

12. Since on or about July 1, 1967, and thereafter, and more particularly on July 12, 1967, UPGWA has requested, and continues to request, that Respondent bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, as the exclusive collective-bargaining representative of the employees of Respondent in the unit described in paragraph 10 above.

13. Since on or about July 1, 1967, and thereafter, and more patricularly on July 12, 1967, the UPGWA has requested, and is requesting, Respondent to honor and and give effect to the collective-bargaining agreement described in paragraph 9 above.

14. Since on or about July 12, 1967, and at all times thereafter, and more particularly on July 24, 1967, Respondent has refused, and continues to refuse, to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, with the UPGWA, as the exclusive collective-bargaining representative of its employees in the appropriate unit described in paragraph 10 above.

15. Since on or about July 12, 1967, and at all times thereafter, and more particularly on July 24, 1967, Respondent has rejected, and continues to reject, the UPGWA's request, described in paragraph 13 above, and has refused, and continues to refuse, to honor or give effect to the collective-bargaining agreement described in paragraph 9 above.

16. On or about July 1, 1967, Respondent unilaterally changed existing wage rates, hours of employment, overtime wage rates, differentials for swing shift and graveyard shift, and other terms and conditions of employment of the employees in the appropriate unit described in paragraph 10 above.

17. (a) At all times material herein, and more particularly since on or about June 1, 1967, Respondent and the AFG have entered into, performed, maintained, and otherwise given effect to an arrangement, understanding, or practice requiring membership in AFG as a condition of employment by Respondent at its Lockheed-Ontario operations, and said arrangement, understanding, or practice does not comply with the requirements of Section 8(a)(3) of the Act.

(b) Since on or about June 1, 1967, and continuing to date, Respondent has required, and is requiring, membership in or application for membership in AFG as a condition of employment at its Lockheed-Ontario operations.

18. On or about July 1, 1967, Respondent gave an employee a promotion and increase in rate of pay because said employee joined, assisted, and engaged in activity on behalf of the AFG.

19. Since on or about June 1, 1967, and continuing to date, Respondent, through its agents W. C. New, Major Goddard, Captain Owen R. Bagby, Lieutenant Smith, and Captain Kietzlow, has aided and assisted, and is aiding and assisting, AFG in solicitng Respondent's employees to join or become members of AFG and has aided and assisted AFG in collecting applications for membership in AFG from Respondent's employees.

20. On or about June 12, 1967, Major Goddard promised an employee a promotion and an increase in rate of pay because said employee joined, assisted, and engaged in activity on behalf of the AFG.

21. On or about June 29, 1967, Respondent extended recognition to AFG as the exclusive collective-bargaining representative of Respondent's employees in the unit described in paragraph 10 above, notwithstanding the fact that said union was not, has not been, and is not now, duly designated and selected as the representative for the purposes of collective bargaining by an uncoerced majority of the employees in said unit.

22. By the acts described in paragraphs 14, 15, and 16 above, and by each of said acts, Respondent did refuse to bargain collectively in good faith, and is refusing to bargain collectively in good faith, with the UPGWA as the exclusive representative of the employees in the appropriate unit described in paragraph 10 above, and did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) of the Act.

23. By the acts described in paragraphs 17 and 18 above, and by each of said acts, Respondent did discriminate, and is discriminating, in regard to hire or tenure or terms or conditions of employment of its employees, thereby encouraging membership in a labor organization, and Respondent thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) of the Act.

24. By the acts described in paragraphs 17, 18, 19, 20, and 21, above, and by each of said acts, Respondent did render, and is rendering, unlawful assistance and support to a labor organization, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(2) of the Act.

25. By the acts described in paragraphs 14 through 24 above, and by each of said acts, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) of the Act.

26. The acts of Respondent described in paragraphs 14 through 25 above, occurring in connection with its operations described in paragraph 2 and 3 above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several states, and have led, and tend to lead, to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

27. The acts and conduct of Respondent described in paragraphs 14 through 26 above, constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), (3), and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 28th day of November 1967, at 10 a.m., PST, in Room 920 (Hearing Room #1), Ninth Floor, Bartlett Building, 215 West Seventh Street, Los Angeles, California, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB-4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases as Taken from the Board's

Published Rules and Regulations and Statements of Procedure, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four copies of an answer to said Complaint within 10 days from the service thereof and that unless it does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.

DATED at Los Angeles, California, this 25th day of October 1967.

/s/ Paul A. Cassady
PAUL A. CASSADY
Regional Director
National Labor Relations Board
Region 31
10th Floor, Bartlett Building
215 West Seventh Street
Los Angeles, California 90014

GENERAL COUNSEL'S EXHIBIT No. 1(j)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL NO. 1, PARTY IN INTEREST

ANSWER OF RESPONDENT THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

The William J. Burns International Detective Agency, Inc., Respondent herein, for its answer to the complaint in Case No. 31-CA-776 admits, denies and avers as follows:

1. Respondent admits paragraphs 1. (a) and 1. (b).

2. Respondent admits paragraphs 2. (b) and 2. (a), except Respondent specifically denies it is a New York corporation. And Respondent denies allegations in paragraph 2. (c), upon information sufficient to form a belief.

3. Respodnent admits paragraph 3., except Respondent denies allegations regarding Wackenhut, upon information sufficient to form a belief.

4. Respondent admits paragraph 4.

5. Respondent denies allegation of paragraph 5. (a), upon information sufficient to form a belief. And Respondent denies each and every allegation in paragraph 5. (b), except Respondent admits it is now performing plant protection services for Lockheed Aircraft Service Company at Ontario, California.

6. Respondent denies each and every allegation in paragraph 6., except Respondent admits the listed persons are in Respondent's employ, except reference to Hackelhurst, Guard Captain, about whom Respondent states it has no knowledge or information.

7. Respondent denies allegations of paragraph 7.

8. Respondent denies allegations of paragraph 8, upon information sufficient to form a belief.

9. Respondent denies allegations of paragraph 9, upon information sufficient to form a belief.

10. Respondent denies allegations of paragraph 10.

11. Respondent denies the allegations of paragraph 11.

12. Respondent denies each and every allegation of paragraph 12, except Respondent specifically admits UPGWA made alleged request on Respondent on July 12, 1967.

13. Respondent denies each and every allegation of paragraph 13., except Respondent specifically admits UPGWA made alleged request on Respondent on July 12, 1967.

14. Respondent denies each and every allegation of paragraph 14, except that Respondent admits it wrote a letter on July 24, 1967 setting forth its position.

15. Respondent denies each and every allegation of paragraph 15, except that Respondent admits it wrote a ltter on July 24, 1967 setting forth its position.

16. Respondent denies allegations of paragraph 16.

17. Respondent denies allegations of paragraph 17. (a) and (b).

18. Respondent denies allegations of paragraph 18.

19. Respondent denies allegations of paragraph 19, except that part referring to Hackelhurst, Guard Captain, about whom Respondent states it has no knowledge or information, as answered in paragraph 6. above.

20. Respondent denies allegations of paragraph 20.

21. Respondent denies each and every allegation of paragraph 21., except Respondent admits it recognized AFG o nJune 29, 1967 as exclusive collective-bargaining representative of Respondent's employees at Lockheed Aircraft Services, Ontario, California.

22. Respondent denies allegations of paragraph 22.

23. Respondent denies allegations of paragraph 23.

24. Respondent denies allegations of paragraph 24.

25. Respondent denies allegations of paragraph 25.

26. Respondent denies allegations of paragraph 26.

27. Respondent denies allegations of paragraph 27.

WHEREFORE, having fully answered, Respondent prays that an order be entered herein finding that in Case No. 31-CA-776 Respondent has at all times complied with the provisions of the Labor Management Relations Act, and that Respondent be found not to have been in violation of any of the provisions hereof as al-

leged in said Complaint, and that each and all of the complaints in said Complaint be dismissed.

/s/ John M. Geraty
JOHN M. GERATY
235 East 42nd Street
New York, New York
For the Respondent

I certify that copies of the foregoing were mailed to International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162, 14214 East Jefferson, Detroit, Michigan, and Livingston, Gregory, Van Lopik & Cranefield, Attorneys, for Union and American Federation of Guards, Local No. 1, 4157 West Fifth Street, Room 218, Los Angeles, California, this 13th day of November 1967.

/s/ John M. Geraty
For the Respondent

GENERAL COUNSEL'S EXHIBIT No. 1(k)

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

AMENDED ANSWER OF RESPONDENT THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

The William J. Burns International Detective Agency, Inc., Respondent herein, for its answer to the complaint in Case No. 31-CA-776 admits, denies and avers as follows:

1. Respondent admits paragraphs 1. (a) and 1. (b).

2. Respondent admits paragraphs 2. (b) and 2. (a), except Respondent specifically denies it is a New York corporation. And Respondent denies allegations in paragraph 2. (c), upon information sufficient to form a belief.

3. Respondent admits paragraph 3., except Respondent denies allegations regarding Wackenhut, upon information sufficient to form a belief.

4. Respondent admits paragraph 4.

5. Respondent denies allegation of paragraph 5. (a), upon information sufficient to form a belief and Respondent denies each and every allegation in paragraph 5. (b), except Respondent admits it is now performing plant protection services for Lockheed Aircraft Service Company at Ontario, California and Respondent denies allegations of paragraph 5. (c).

6. Respondent denies each and every allegation in paragraph 6., except Respondent admits the listed persons are in Respondent's employ, except reference to Hackelhurst, Guard Captain, about whom Respondent states it has no knowledge or information.

7. Respondent denies allegations of paragraph 7.

8. Respondent denies allegations of paragraph 8, upon information sufficient to form a belief.

9. Respondent denies allegations of paragraph 9, upon information sufficient to form a belief.

10. Respondent denies allegations of paragraph 10.

11. Respondent denies the allegations of paragraph 11.

12. Respondent denies each and every allegation of paragraph 12, except Respondent specifically admits UPGWA made alleged request on Respondent on July 12, 1967.

13. Respondent denies each and every allegation of paragraph 13., except Respondent specifically admits UPGWA made alleged request on Respondent on July 12, 1967.

14. Respondent denies each and every allegation of paragraph 14, except that Respondent admits it wrote a letter on July 24, 1967 setting forth its position.

15. Respondent denies each and every allegation of paragraph 15, except that Respondent admits it

wrote a letter on July 24, 1967 setting forth its position.

16. Respondent denies allegations of paragraph 16.

17. Respondent denies allegations of paragraph 17. (a) and (b).

18. Respondent denies allegations of paragraph 18.

19. Respondent denies allegations of paragraph 19, except that part referring to Hackelhurst, Guard Captain, about whom Respondent states it has no knowledge or information, as set forth in paragraph 6. above.

20. Respondent denies allegations of paragraph 20.

21. Respondent denies each and every allegation of paragraph 21., except Respondent admits it recognized AFG on June 29, 1967 as exclusive collective-bargaining representative of Respondent's employees at Lockheed Aircraft Service Company, Ontario, California.

22. Respondent denies allegations of paragraph 22.

23. Respondent denies allegations of paragraph 23.

24. Respondent denies allegations of paragraph 24.

25. Respondent denies allegations of paragraph 25.

26. Respondent denies allegations of paragraph 26.

27. Respondent denies allegations of paragraph 27.

WHEREFORE, having fully answered, Respondent prays that an order be entered herein finding that in Case No. 31-CA-776 Respondent has at all times complied with the provisions of the Labor Management Relations Act, and that Respondent be found not to have been in violation of any of the provisions hereof as al-

leged in said Complaint, and that each and all of the complaints in said Complaint be dismissed.

/s/ J. Forrest Ingle
J. FORREST INGLE
2323 Beverly Boulevard
Los Angeles, California
For the Respondent

I certify that copies of the foregoing were mailed to International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162, 14214 East Jefferson, Detroit, Michigan, and Livingston, Gregory, Van Lopik & Cranefield, Attorneys, for Union and American Federation of Guards, Local No. 1, 4157 West Fifth Street, Room 218, Los Angeles, California, this 15th day of November 1967.

/s/ J. Forrest Ingle
For the Respondent

GENERAL COUNSEL'S EXHIBIT NO. 2

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1, PARTY IN INTEREST

STIPULATION

It is hereby stipulated by Counsel for William J. Burns International Detective Agency, Inc. (hereinafter called the Respondent), and Counsel for the General Counsel of the National Labor Relations Board as follows:

1. The record in this case shall include this Stipulation and in addition the following documents attached hereto:

(a) The Plant Protection Agreement entered into May 31, 1962, between Lockheed and General Plant Protection Corp. (Wackenhut), and documents of renewals, extensions, or modifications, attached hereto as Exhibit A.

(b) The Plant Protection Agreement between Lockheed and Respondent, dated November 1, 1967, and documents of renewals, extensions, or modifications, attached hereto as Exhibit B.

2. The record in this case shall include the fact that if Mr. N. L. Benjamin, Director of Industrial Relations for Lockheed Aircraft Service Company, who is unable to attend the hearing scheduled for December 19, 1967, were to testify at the hearing, he would testify that on May 15, 1967, at a pre-bid conference attended by several guard service contractors, including the Respondent, to whom the contract was eventually let, he advised the prospective bidders that Wackenhut's guards were currently represented by United Plant Guard Workers of America; and that there was in existence a labor agreement between Wackenhut and this Union covering these employees; and that this Union had been certified by the NLRB in a recent election.

This Stipulation is made without prejudice to any objection that any party may have as to the materiality or competency of any facts stated herein.

DATED at Los Angeles, California, this 15th day of December, 1967.

Respectfully submitted,

/s/ Seymour Swerdlow
Counsel for
William J. Burns International
Detective Agency, Inc.

/s/ Gerald Goldman
GERALD GOLDMAN
Counsel for the General Counsel

/s/ Gordon A. Gregory
Counsel for Charging Party

EXHIBIT A

31 May 1967

1380-67-195

The Wackenhut Corporation
618 South Serrano Ave.
Los Angeles, Calif. 90005

Subject: Plant Protection Services

Attention: Mr. Richard G. Curtin

Gentlemen:

Thank you for your prompt response to our recent invitation to bid for the subject Plant Protection Services.

A contract award has been made to the William J. Burns International Detective Agency, Inc. The award for the aforementioned services was made upon the basis of the lowest bid price submitted.

Pursuant to paragraph 1 of Plant Protection Agreement between Lockheed Aircraft Service Company, a Division of Lockheed Aircraft Corporation, and General Plant Protection Corporation, a Division of The Wackenhut Corporation, you are herein notified that the subject agreement is terminated on the thirtieth day of June 1967.

Very truly yours,

LOCKHEED AIRCRAFT SERVICE COMPANY

/s/ P. E. Clay
P. E. CLAY, Manager
Material Department

PEC:lel

Letter Register #50766

AMENDMENT NO. 1 TO THE PLANT PROTECTION AGREEMENT

THIS AMENDMENT, made and entered into in duplicate as of the 1st day of July 1966, by and between LOCKHEED AIRCRAFT CORPORATION, for its Division, LOCKHEED AIRCRAFT SERVICE COMPANY and GENERAL PLANT PROTECTION CORPORATION.

THE PLANT PROTECTION AGREEMENT entered into by the parties as of the 31st day of May 1962, is hereby amended as follows;

1. In Article 1, delete the figure "1962" and in its place insert the figure "1966"; and delete the figure "1963" and in its place insert the figure "1967".

2. In Article 12, delete the figure "$2.18" wherever it appears and insert in its place the figure "$2.21"; and delete the figure "$3.13" wherever it appears and insert in its place the figure "$3.16".

All other terms and provisions are to remain the same.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by their duly authorized representatives as of the date first above written.

LOCKHEED AIRCRAFT CORPORATION
for its Division,
LOCKHEED AIRCRAFT SERVICE
COMPANY

By /s/ D. O. Wood
D. O. WOOD
Its Vice President

GENERAL PLANT PROTECTION
CORPORATION

By /s/ [Illegible]
Its Manager

PLANT PROTECTION AGREEMENT

THIS AGREEMENT, made and entered into in duplicate as of the 31st day of May, 1962, by and between LOCKHEED AIRCRAFT CORPORATION, a California Corporation, for and on behalf of its Division, LOCKHEED AIRCRAFT SERVICE COMPANY, with an office and place of business at Ontario International Airport, Ontario, California (hereinafter sometimes referred to as "Lockheed") and GENERAL PLANT PROTECTION CORPORATION, a Delaware Corporation, with an office and place of business at 6900 South Hoover Street, Los Angeles, California (hereinafter sometimes referred to as "Contractor").

WITNESSETH:

WHEREAS, Lockheed as sublessee is in possession of certain land, premises, and facilities comprising a portion of the Ontario International Airport, situated in the City of Ontario, County of San Bernardino, State of California (hereinafter sometimes referred to as "the premises"); and

WHEREAS, Lockheed is utilizing the premises to carry on its business of overhaul, maintenance, and repair of aircraft; and the manufacture of certain special products and devices, and for other general business purposes; and

WHEREAS, Contractor is in the business of furnishing general plant protection services, including guard services, to industrial plants and other facilities; and

WHEREAS, it is the mutual desire of the parties hereto that Contractor shall furnish certain guard and plant protection services for the protection of Lockheed's personnel, together with certain premises and all personal property located thereon (sometimes hereinafter collectively referred to as "the personnel and property");

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter con-

tained, it is mutually agreed by the parties hereto as follows:

1. This Agreement shall commence effective the first day of July, 1962, and shall end on the thirtieth day of June, 1963, provided, however, that either party hereto shall have the right to terminate this Agreement at any time during the term hereof by giving thirty (30) days advance written notice to the other party. Lockheed shall have the right and option to extend the term of this Agreement from year to year, subject to the foregoing rights of termination, by written notice to Contractor. Any such extension shall be subject to mutual agreement of the rates hereinafter provided for by Paragraph 12 of this Agreement and any such extension which modifies the rates shall likewise be mutually executed by both parties. In the event no modification of the rates are mutually required, this Agreement may be extended by simple written notice as hereinabove provided.
2. Contractor shall furnish, over a 24-hour period per day, 7 days per week, during the term hereof, such uniformed, armed guard personnel at the premises as Lockheed shall request; their duties, posts of assignment, and hours of work to be agreed upon between the parties hereto from time to time.
3. Contractor's guard personnel shall provide proper protection to the personnel and property, including, but not limited to, protection from injury, loss or damage resulting from fire, theft, riots, strikes, sabotage, altercations and/or malicious mischief, and shall permit only authorized persons, material, and equipment to enter or leave the premises.
4. Contractor shall furnish the required adequately-trained guard personnel, completely outfitted with uniforms and necessary equipment, including badges and side arms, which said uniforms and equipment shall be of a type and meet the standards which shall be set by Lockheed and shall be maintained to Lockheed's satisfaction.

5. Nothing in this Agreement shall be construed to create the relationship of employer and employee between Lockheed and Contractor or between Lockheed and any employee or agent of Contractor, it being the intention and purpose hereof that Contractor shall at all times and for all purposes be considered as and to be an independent contractor in the performance of services hereunder. Contractor shall pay all salaries and expenses of, and shall pay all Federal Social Security taxes, Federal and State unemployment taxes, and any similar taxes relating to, said guard personnel furnished hereunder.
6. Contractor agrees that it will indemnify and hold harmless Lockheed, its officers, agents, and employees, and each of them, from any and all loss, cost, damage, expense and/or liability by reason of property damage and/or personal injury of whatsoever nature or kind, arising out of or as a result of any affirmative or negligent act or failure to act by Contractor's guard personnel in connection with the performance of services hereunder and Contractor agrees that the Public Liability and Property Damage Insurance which it is required to maintain hereunder will cover the obligations hereinabove set forth in this Article 6.
7. Contractor covenants and agrees that it will procure from insurance companies acceptable to Lockheed and maintain during the term hereof, at its cost and in its name, the following insurance:

   (a) Workmen's Compensation Insurance covering all persons employed by Contractor engaged in the performance of services hereunder;
   (b) Comprehensive Public Liability and Property Damage Insurance, including automobile liability, covering liability for bodily injuries to or death of persons or liability for damages because of injury to or loss or destruction of property, including loss of use thereof, arising out of the performance of this Agreement in the stated amounts of $100,000.00 for one person

and $300,000.00 for more than one person in any one occurrence and $300,000.00 for property damage resulting from any one occurrence. Certificates of all such insurance policies, except Workmen's Compensation Insurance, shall be filed with Lockheed and shall contain a provision that no cancellation or material change in the policies shall become effective except on ten (10) days advance written notice thereof to Lockheed.

8. In the performance of the services required to be furnished hereunder, Contractor agrees that it and its employees will comply with all statutes, ordinances, laws, rules, and regulations of all Federal and local governments and each agency, authority, or commission thereof, which may have jurisdiction to pass statutes, ordinances, or laws, or enforce rules or regulations with respect to the services furnished hereunder.
9. Without limiting the responsibility of Contractor for the proper conduct of its guard personnel and the protection of Lockheed personnel and property, the conduct of said guard personnel shall be guided by a set of standard rules as agreed upon between Lockheed and Contractor, and such special other written instructions applicable to the services as may be issued by Lockheed from time to time through its designated agents.
10. Contractor shall be responsible for the direct supervision of its guard personnel furnished hereunder through its designated supervisor assigned to the premises, and such supervisor shall, in turn, be available at all reasonable times to report to and confer with the designated agents of Lockheed with respect to the services.
11. Contractor agrees that the guard services provided hereunder shall be performed by qualified, careful, and efficient employees, in strictest conformity with the best practices and such standards as may be prescribed by Lockheed from time to time. Contrac-

tor further agrees that, upon request by Lockheed, Contractor will remove from service hereunder any of its employees who, in Lockheed's opinion, is guilty of improper conduct or is not qualified or needed to perform the work assigned to him.

12. For services rendered hereunder, Lockheed agrees to pay Contractor the sum of $2.18 for each hour worked by each of Contractor's guard personnel, including supervisors; provided, however, that in the event of a strike at said premises by Lockheed's employees, Lockheed agrees that said sum shall be increased to $3.13 during the duration of such a strike and, in addition thereto, Lockheed shall pay Contractor $1.00 for each 8-hour shift worked by each of Contractor's guard personnel during the duration of such a strike to cover the cost to Contractor for extra insurance. All unscheduled off-base hours of service ordered by Lockheed shall be billed at the premium rate of $3.13 per man-hour. Transportation and living expenses associated with off-base hours of service shall be subject to negotiation between the parties hereto at each occurrence of said off-base hours of service.
13. The supervisor provided by Contractor to supervise the guard personnel provided under this Agreement shall devote his full time to this assignment and shall not be permitted to supervise personnel or perform work at any other plant.
14. Contractor shall submit written reports as required by Lockheed, and the aforesaid supervisor, as a part of his regular duties, shall investigate any thefts or loss of property from the premises that may occur.
15. Notice to Lockheed, as herein provided, shall be served if sent by registered mail, postage prepaid, addressed to Lockheed Aircraft Service Company, a Division of Lockheed Aircraft Corporation, at Post Office Box 33, Ontario, California, and notice to Contractor in the same manner shall likewise be served if addressed to Contractor at 6900 South Hoover Street, Los Angeles, California, or at such addresses

as may be designated by Lockheed or Contractor in writing from time to time.

16. The obligations, terms, covenants, and conditions herein contained shall apply to and bind the parties hereto, and their successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Plant Protection Agreement as of the day and year first above written.

LOCKHEED AIRCRAFT CORPORATION

By /s/ Ralph J. Osborn
Vice President

GENERAL PLANT PROTECTION CORPORATION

By /s/ R. E. Lair
President

EXHIBIT B

PLANT PROTECTION SERVICES AGREEMENT

THIS AGREEMENT made and entered into in duplicate as of the 21st day of June, 1967, by and between LOCKHEED AIRCRAFT CORPORATION (a California Corporation), for its Division, LOCKHEED AIRCRAFT SERVICE COMPANY (hereinafter sometimes referred to as "Lockheed") having a place of business at Ontario International Airport, Ontario, California (hereinafter sometimes referred to as the "facility") and WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC. (a Delaware Corporation) (hereinafter sometimes referred to as the "Contractor") having a place of business at 2323 Beverly Boulevard, Los Angeles, California.

WITNESSETH

WHEREAS, the nature of Lockheed's business requires plant protection services for the facility and elsewhere; and

WHEREAS, the Contractor is aware of the nature and extent of such plant protection services and is willing and able to perform them;

NOW, THEREFORE, it is hereby agreed by and between the parties hereto in consideration of the covenants hereinafter set forth as follows:

1. The term of this Agreement is 1 July 1967 through 31 July 1969. Lockheed shall have the right and option to extend the term of this Agreement from year to year by written notice to the Contractor. Any such extension shall be subject to mutual agreement of the rates.
2. Contractor shall furnish over a 24-hour period per day, seven (7) days per week during the term thereof, such uniformed, armed guard personnel as Lockheed shall request. Their duties, posts of assignment, and hours of work are to be agreed upon between the Contractor and Lockheed. Contractor

shall provide immediate and uninterrupted maintenance of plant protection services in the event of a strike or walkout by the Contractor's employees on duty at the Lockheed facility.

3. Contractor's guard personnel shall provide proper protection to all Lockheed personnel and property, including, but not limited to, protection from injury, loss or damage resulting from fire, theft, riots, strikes, sabotage, altercations and/or mischief, and shall permit only authorized persons, material and equipment to enter and leave the facility. Said services will be provided in compliance with Lockheed and pertinent Government rules and regulations.
4. Contractor will furnish the required adequately trained guard personnel, completely outfitted with uniforms and necessary equipment, including badges, passes and side arms. Uniforms and equipment must meet the standards set by Lockheed and shall be maintained to Lockheed's satisfaction.
5. Nothing in this Agreement shall be construed to create the relationship of employer and employee between Lockheed and Contractor or between Lockheed and any employee or agent of Contractor, it being the intent and purpose hereof that Contractor shall at all times and for all purposes be considered an independent Contractor in the performance of services hereunder. Contractor shall pay all salaries and expenses of, and shall pay all Federal Social Security Taxes, Federal and State Unemployment Taxes, and any similar taxes relating to said guard personnel furnished hereunder.
6. Contractor agrees that it will indemnify and hold harmless Lockheed, its officers, agents and employees, and each of them from any and all loss, cost, damage, expense and/or liability by reason of property damage and/or personal injury of whatsoever nature or kind, arising out of or as a result of any affirmative or negligent act or failure to act by Contractor's guard personnel in connection with the performance of services hereunder and Contractor agrees that the Public Liability and Property Dam-

age Insurance which it is required to maintain hereunder will cover the obligations herein above set forth in the paragraph.

7. Contractor covenants and agrees that it will procure from insurance companies acceptable to Lockheed and maintain during the term hereof at its cost and in its name the following insurance:

   A. Workmen's Compensation Insurance covering all persons employed by Contractor engaged in the performance of services hereunder;

   B. Comprehensive Public Liability and Property Damage Insurance, including automobile liability, covering liability for bodily injuries to or death of persons or liability for damages because of injury to or loss or destruction of property, including loss of use thereof, arising out of the performance of this Agreement in the stated amounts of $100,000 for one person, and $300,000 for more than one person in any one occurrence, and $300,000 for property damage resulting from any one occurrence.

   C. Certificates of all such insurance policies, except Workmen's Compensation Insurance, shall be filed with Lockheed and shall contain a provision that no cancellations or material change in the policies shall become effective except on ten (10) days' advance written notice thereof to Lockheed.

8. In the performance of the services required to be furnished hereunder, Contractor agrees that it and its employees will comply with all statutes, ordinances, laws, rules and regulations of all Federal, State and Local Governments and each agency, authority or commission thereof, which may have jurisdiction to pass statutes, ordinances or laws or enforced rules or regulations with respect to services furnished hereunder.

9. Without limiting the responsibility of Contractor for the proper conduct of its guard personnel and the protection of Lockheed personnel and property, the

conduct of said guard personnel shall be guided by a set of standard rules as agreed upon between Lockheed and Contractor, and such special other written instructions applicable to the services as may be issued by Lockheed from time to time through its designated agents.

10. Contractor shall be responsible for the direct supervision of its guard personnel furnished hereunder through its designated supervisor assigned to the facility, and such supervisor shall, in turn, be available at all reasonable times to report to and confer with the designated agents of Lockheed with respect to the services.
11. Contractor agrees that the guard services provided hereunder shall be performed by qualified, careful and efficient employees, in strictest conformity with the best practices and such standards as may be prescribed by Lockheed from time to time, and shall possess necessary security clearances, as required by Department of Defense Industrial Security Regulations. Contractor further agrees that, upon request by Lockheed, Contractor will remove from service hereunder any of its employees who, in Lockheed's opinion, is guilty of improper conduct or is not qualified or needed to perform the work assigned to him. Contractor possesses or shall take immediate steps to obtain a "Top Secret" facility clearance. Said "Top Secret" clearance terminology is as defined in the Department of Defense Industrial Security Regulations.
12. The supervisor provided by Contractor to supervise the guard personnel provided under this Agreement shall devote his full time to this assignment and shall not be permitted to supervise personnel or perform work at any other plant.
13. The Contractor shall submit written reports as required by Lockheed, and the aforesaid supervisor, as a part of his regular duties, shall investigate any thefts or loss of property from the facility that may occur.

14. For services rendered hereunder, Lockheed agrees to pay Contractor the sum of $2.55 for each hour worked by each of Contractor's guard personnel, including supervisors. In the event of a strike at said premises by Lockheed's employees, the rate for each hour worked shall also be $2.55. All unscheduled off-base hours or service ordered by Lockheed shall be billed at the rate of $2.55 per manhour. Transportation and living expenses associated with off-base hours of service shall be subject to negotiation between the parties hereto at each occurrence of said off-base hours of service.
15. Invoices will be prepared by the Contractor on a monthly basis and must be accompanied by or referenced to time records that show the hours expended by each guard and the hourly billing rate.
16. Contractor shall furnish additional equipped guards to accomplish protective requirements which may be requested by Lockheed. Such service shall be provided by the Contractor at standard-time billing rates.
17. In connection with the performance of work under this Agreement, the Contractor agrees not to discriminate against any employee for employment, because of race, religion, color, sex, or national origin. This provision shall include, but not be limited, to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
18. The services to be performed hereunder shall be in accordance with the Statement of Work dated 12 May 1967, which is attached hereto and by reference made a part hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date first above written.

LOCKHEED AIRCRAFT CORPORATION
For its Division
LOCKHEED AIRCRAFT SERVICE
COMPANY

By /s/ D. O. Wood
D. O. WOOD
Its President

WILLIAM J. BURNS INTERNATIONAL
DETECTIVE AGENCY, INC.

By /s/ [Illegible]

Its Branch Manager

/s/ [Illegible]

Date: 12 May 1967

STATEMENT OF WORK

1. Contractor shall provide sufficient guards to control entry and exits of employees through perimeter complex entrances, identified on the enclosed facility diagram. Guards shall be assigned to such posts on the following schedule, or as circumstances may dictate, by Lockheed.

   a. *Mian Guard Station: Gate #201, Area 01*

      (1) One patrolman, 24 hours per day, 7 days per week

      (2) One Sergeant, 24 hours per day, 7 days per week

      (3) One Captain (Supervisor), 8 hours per day, 5 days per week

      (4) One Patrolman (relief), 16 hours per day, 5 days per week

      (5) One Patrolman (roving), 24 hours per day, 7 days per week

   b. *Lobby, Building #10, General Offices*

      (1) One Patrolman, 10.5 hours per day, 5 days per week

   c. *East Gate, Station #203, Area 01*

      (1) One Patrolman, 19.5 hours per day, 5 days per week

   d. *Gate #213, Area 04*

      (1) One Patrolman, 24 hours per day, 7 days per week

2. Contractor shall provide or supply the following property or equipment during the term of the Agreement:

   a. *Vehicles*

      (1) Supply a minimum of two (2) vehicles to be used by assigned guard personnel during the period July 1967 through June 1968.

(2) Supply a minimum of two (2) vehicles to be used by assigned guard personnel during the period June 1968 through July 1969. Vehicles to be equipped with a telephone communications system for control and dispatch purposes.

b. *Clothing*

(1) Provide all guards with uniforms and accessory items, including headgear.

(2) Supply inclement weather clothing, such as raincoats, hats, boots or cold weather jackets for guard personnel whose duties will require exposure to climatic elements.

c. *Equipment*

(1) Supply night sticks to all guards performing duty at facility entry points reflected in paragraph 1.

(2) Supply guards performing roving patrol functions with shoulder-strapped carrying pouches to carry detex punch clocks, locks, flashlights, clipboards, and similar hardware which may be required.

(3) Supply each guard assigned to duty during hours of darkness with a two or three cell flashlight, equipped with necessary batteries for operation.

(4) Provide guards assigned to designated "restricted" or "closed" areas with firearms and associated belts, holsters and ammunition.

(5) Provide a reserve supply of equipment for issue to guard personnel during an emergency environment to consist of the following:

(a) First aid kits, equipped with sterilized dressings, gauze, bandage, tape and customary medicants provided in universally manufactured, commercial-type first aid kits.

(b) Handcarried, battery-operated, flash lamps, with a beam-illumination of not

less than 150 feet, including necessary batteries. A minimum of six (6) units will be maitnained in a state of readiness at the Guard Control Headquarters (Main Gate).

(c) As needed and predicated upon specific request of Lockheed, riot equipment such as protective helmets, riot weapons (shot guns) and ammunition, chemical ampules or gas or smoke (non-poisonous).

(6) Such expendable supplies required to administer plant protection activity; such as necessary report forms, papers and similar items.

3. Lockheed shall furnish or supply:

a. Guard houses/huts as required at non-mobile guard posts.
b. Telephone service.
c. Necessary electrical power and water supply as deemed necessary by Lockheed.
d. Peculiar forms, credentials, or medical supplies, necessary in completing tasks by guard personnel, including the National flag(s).

4. The Contractor shall maintain the guard houses and posts in an orderly and clean condition.
5. Contractor shall accomplish a roving foot patrol of all administrative areas situated in complex 01 once each 2 hours, over a 24-hour interval, 7 days per week.
6. Contractor shall provide a reserve force of patrolman to man selected stations in area 01, 24 hours per day, 7 days per week, as operational circumstances require. Call stations involving 7 guard posts.

TASK

1. Guard personnel shall:

a. Raise and lower the National flag at times prescribed by Lockheed in areas 01, 04 and such other places as may be prescribed.

b. During non-working hours (4:45 p.m. to 8:00 a.m., Mondays through Fridays, and all hours, Saturdays, Sundays and holidays) answer all incoming telephone calls, place telephone calls for employees working in the facility and operate the in-plant address system.
c. Receive, record all employee reports of absence and dispose of such reports in accordance with directions furnished by Lockheed.
d. Provide emergency condition notifications to designated Lockheed representatives according to direction of Lockheed.
e. Perform:
    (1) Fire and safety inspections during routine patrols.
    (2) Physical security inspections of perimeter fences; designated "CLOSED" areas and examinations of safes, files and other containers.
    (3) Enforce parking allocations, notify violators of parking requirements.
    (4) Maintain:
        (a) A record of all inspections, incidents as a matter of routine.
        (b) Controlled entry lists authorizing the admittance of company employees into specific areas.
        (c) Records involving visitors, vendors and other suppliers.
f. Perform vehicle inspections to determine entry and exit of property.
g. Perform inspections of employees' property for determination of authorized removal from the facility.
h. Render first aid as required and dispense first aid supplies as needed.
i. Destroy classified data in accordance with schedules and procedures prescribed by Lockheed.

GENERAL COUNSEL'S EXHIBIT No. 3

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 31

Case No. 31-CA-776

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.

and

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162

and

AMERICAN FEDERATION OF GUARDS, LOCAL 1,
PARTY IN INTEREST

STIPULATION

It is hereby stipulated by Counsel for William J. Burns International Detective Agency, Inc. (hereinafter called the Respondent), and Counsel for the General Counsel of the National Labor Relations Board as follows:

1. The Wackenhut Corporation prior to July 1, 1967, performed plant protection services for Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California.

2. Since on or about July 1, 1967, Wackenhut Corporation has ceased to perform plant protection services for Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California.

3. Since on or about July 1, 1967, Respondent has performed plant protection services for Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California.

4. On or about February 28, 1967, a majority of the employees of Wackenhut, in a unit consisting of all full-time and regular part-time employees of Wackenhut performing plant protection duties as determined in Section 9(b)(3) of the Act, at the Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California; excluding office clerical employees, professional employees, supervisors and all other employees as defined in the Act, by a secret ballot election conducted under the supervision of the Regional Director for the Thirty-first Region of the National Labor Relations Board, voted as indicated on the tally of ballots, attached hereto as Exhibit No. 1, and on or about March 8, 1967, said Regional Director certified the United Plant Guard Workers of America as the exclusive collective-bargaining representative of the employees in said unit. A copy of said Certification of Representative is attached hereto as Exhibit No. 2.

5. On or about April 29, 1967, Wackenhut and the United Plant Guard Workers of America entered into a collective-bargaining agreement, a copy of which is attached hereto as Exhibit No. 3.

6. The attached letter, marked Exhibit No. 4, is the alleged request referred to in paragraphs 12 and 13 of the Amended Answer of Respondent and the record in this case shall include said letter.

7. The attached letter, marked Exhibit No. 5, is the letter referred to in paragraphs 14 and 15 of the Amended Answer of Respondent and the record in this case shall include said letter.

8. On July 1, 1967, when Respondent officially began guard service, some twenty-seven (27) guards formerly working at Lockheed Aircraft Service Company, Ontario International Airport, Ontario, California, in the employ of the Wackenhut Corporation began working as guard employees of Burns; and, concurrently, fifteen (15) employees of Burns, who were transferred from other Burns jobs, also began working at Lockheed. At present Respondent employs twenty-one (21) former Wackenhut employees, twenty-three (23) Burns employees who were

transferred from their Burns jobs, and eight (8) new hires.

This Stipulation is made without prejudice to any objection that any party may have as to the materiality of competency of any facts stated herein.

DATED at Los Angeles, California, this 18th day of December 1967.

Respectfully submitted,

/s/ Seymour Swerdlow
Counsel for
William J. Burns International
Detective Agency, Inc.

/s/ Gerald Goldman
GERALD GOLDMAN
Counsel for the General Counsel
National Labor Relations Board

/s/ Gordon A. Gregory
Counsel for Charging Party

EXHIBIT 3

AGREEMENT

BETWEEN

THE WACKENHUT CORPORATION

and

INTERNATIONAL UNION,

UNITED PLANT GUARD WORKERS OF AMERICA

AND ITS

AMALGAMATED LOCAL 162

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Appendix "A"

PREAMBLE OF THE AGREEMENT

This Agreement is entered into this, the 29th day of April, 1967, by and between The Wackenhut Corporation in Ontario, California, hereinafter referred to as the "Company" and the International Union, United Plant Guard Workers of America and its Amalgamated Local No. 162, hereinafter referred to as the "Union".

ARTICLE 1

Intent and Purpose of the Agreement

1.1 It is the intent and purpose of this Agreement to assure sound and mutually beneficial industrial and economic relationships between the parties hereto, to provide an orderly and peaceful means of conducting negotiations and resolving any misunderstanding or grievances, and to set forth herein the basic agreement between the parties covering rates of pay, wages, hours of work and other conditions of employment.

1.2 The Union, the Company and all employees are bound by and hereby pledge their cooperation in observing all provisions of this Agreement.

1.3 This Agreement shall be binding upon the parties hereto, their successors and assigns and no provisions, terms or obligations herein contained shall be affected, modified, altered, or changed in any respect whatsoever by the consolidation, merger, sale, transfer, or assignment of either party hereto, or affected, modified, altered or changed in any respect whatsoever by any change of any kind in the legal status, ownership or management of either party hereto.

ARTICLE 2

Recognition and Scope of the Agreement

2.1 The Company recognizes the Union and its amalgamated Local 162 as the exclusive collective bargaining representative for all employees designated by the Na-

tional Labor Relations Board's Certification of Representative issued on March 8, 1967, in NLRB case number 31-RC-455, including all full-time and regular part-time employees of the Employer performing plant protection duties as determined in Section 9(b)(3) of the Act at the Lockheed Aircraft Service Company, Ontario International Airport; excluding office clerical employees, professional employees, supervisors, and all other employees as defined in the Act.

ARTICLE 3

Equal Employment Opportunity

3.1 The Company and the Union recognize the responsibility as anticipated in the program of the President's Committee on Equal Employment Opportunity and their responsibility under Federal, State and local laws relating to fair employment practices.

3.2 The Company and the Union further recognize the moral principles involved in the area of civil rights and hereby affirm their commitment not to discriminate because of sex, color, race, creed or national origin.

ARTICLE 4

Continuity of Operations

4.1 During the term of this Agreement there shall be no strikes, lockouts, work stoppages, picket lines, slowdowns or secondary boycotts. The Union guarantees to support the Company fully and maintain operations in every way.

4.2 In the event of any work stoppage by another labor group involving the client's property or operations, the employees will continue to man stations for the protection of life and property, fire watch, and protection of security interests on the premises.

4.3 Guards will not be required to participate in any strike breaking activities.

ARTICLE 5

SECURITY

5.1 The Union recognizes that the Company has certain obligations in its contract with its client pertaining to security and agrees that nothing in this Agreement is intended to place the Company in violation of its security agreement with its client. Therefore, in the event any governmental agency advises the Company that any employee covered by this Agreement is restricted from work on, or access to, classified information or material, neither the employee nor the Union will contest the discharge of such employee by the Company. The Union will be notified of a discharge under this Section.

ARTICLE 6

ADJUSTMENT OF GRIEVANCES

6.0 In order to establish effective machinery for a fair, expeditious, and orderly adjustment of grievances, the parties agree that in the event any complaint or grievance arises over the interpretation or application of any provisions of this contract, there will be an earnest effort to settle such complaint or grievance by the following procedure:

6.1 Step 1. An employee who believes he has justifiable complaint or grievance shall discuss such with his supervisor, in an attempt to settle the grievance or complaint. A union steward may be present at such presentation or may present the grievance on behalf of the union or the employee.

6.2 Step 2. If the matter is not resolved in Step 1, the grievance shall, not later than ten (10) calendar days after the occurrence of the facts giving rise to the grievance, be reduced to writing, setting forth the facts in detail, and specifying the Article and Section allegedly violated, and signed by the aggrieved employee and the Committeeman, and shall be submitted to the officer in charge of that operation or his designee. The officer in

charge of the operation or his designee will have ten (10) calendar days from the date the grievance was presented to him to answer in writing, with copy to the aggrieved employee and the Committeeman.

6.3 Step 3. If the matter is not resolved in Step 2 it will be reviewed by the local union president and the Company's West Coast Personnel Supervisor within five (5) calendar days of the denial by the officer in charge of the operation. The Personnel Supervisor will have five (5) calendar days from the date of the review to submit his answer.

6.4 If the grievance is still unsettled, it will be reviewed by the International Union representative and the Company's Vice-President of Industrial Relations, or their designees within ten (10) days, excluding Saturdays, Sundays, and Holidays, of the denial by the Company's West Coast Supervisor.

6.5 Grievances which have been processed in accordance with the requirements of the aforesaid Paragraphs and which remain unsettled may be processed to arbitration in accordance with the following procedures and limitations:

6.6 The Union, within ten (10) calendar days after the rejection of the grievance by the Vice-President of Industrial Relations or his designee, may in writing notify the Company of its intent to invoke arbitration, and the Company and the Union will jointly attempt to agree upon the selection of a neutral arbitrator to hear the case. Should the parties fail to agree upon the selection of an arbitrator, the party seeking arbitration will request the Federal Mediation and Conciliation Service to supply a list of arbitrators to hear the case; copy of this request will be sent to the other party. This request will be made within five (5) calendar days after failure of the parties to agree upon an arbitrator. An arbitrator will be selected from the list supplied by the Federal Mediation and Conciliation Service by the parties alternately striking from the list until one name remains, and this individual will be the arbitrator to hear the case.

6.7 The decision of the arbitrator shall be final and binding on all parties concerned. Cost of arbitration shall be borne equally by the Union and the Company. Arbitrators cannot change, modify or amend this Agreement, but only interpret and apply it.

6.8 Any grievance involving discharge, layoff or other potential accumulating back pay liability shall be commenced at Step 2 of this procedure and the written grievance shall be prosented to the officer in charge of the operation or, in his absence, to his designee within five (5) calendar days after the occurrance of the facts giving rise to the grievance.

6.9 All time limits contained in this Agreement may be extended by mutual agreement between the Union and the Company.

ARTICLE 7

Management Rights

7.1 The management of the Company and the direction of its employees, including the establishment of reasonable work rules and regulations, the hiring, promoting, demoting and rehiring of employees in connection with any reduction or increase in working forces, the suspending, the discharging or otherwise disciplining of employees are the exclusive functions of the Company, to the extent that any of such matters are not otherwise covered or provided for in this Agreement.

7.2 Any claim that the Company has exercised such right and power contrary to the provisions of this Agreement may be taken to the Grievance-Arbitration provision contained in Article 6.

ARTICLE 8

Discipline and Discharge

8.1 The Company has the right to discipline or discharge an employee for incompetency, disobedience, disorderly conduct, negligence, or any other just and sufficient cause.

8.2 Written notice (two copies) of disciplinary action will be furnished the affected employee.

8.3 Upon taking of discharge action against an employee, the Company will permit the employee to contact his Union representative, if he so desires, before leaving the premises.

8.4 Any employee interviewed concerning the discipline may, if he so desires, request the presence of his Union representative to represent him during such interview.

8.5 During his probationary period, an employee may be discharged or disciplined at the Company's option without recourse to the grievance procedure, except for any alleged discrimination because of lawful and legitimate activity on the part of the employee in or on behalf of the Union not in conflict with this Agreement.

8.6 In imposing any discipline on a current charge, management will not take into account any prior infractions which occurred more than two (2) years previously.

ARTICLE 9

Notice of Termination of Employment

9.1 Employees shall give the Company two (2) weeks' notice of resignation in writing. Failure to give such notice shall result in the forfeiture of the employee's accrued vacation.

9.2 Employees laid off through no fault of their own shall be granted two (2) weeks' notice in writing, or two (2) weeks' pay in lieu thereof, except in the event the Company's contract with its prime contractor is terminated.

9.3 The requirement of notice set forth in the above paragraph shall not apply to a layoff caused by an Act of God, strike, or other similar circumstances beyond the control of the Company.

ARTICLE 10

CASUALS

10.1 The Union and the Company agree that the employment of "casuals" will be for the purpose of covering absenteeism among the work force at Ontario. The number of employees that may be utilized as "casuals" at any one time will not exceed three (3) employees during the life of this Agreement.

10.2 Casuals will earn seniority among themselves while so classified, and should a casual refuse a transfer to regular status when offered, his name will drop to the bottom of the casuals' seniority list.

10.3 When casuals accept a transfer to regular status, they will carry with them all accumulaed and/or earned credits for pay and benefit eligibility purposes from their original date of hire.

10.4 Casuals, when transferring to regular status, will not carry with such transfer more than the first ninety (90) calendar days or sixty (60) actual days worked, whichever is greater, for seniority purposes.

ARTICLE 11

UNION SECURITY

11.1 It is a continuing condition of employment with the Company that all employees covered by this Agreement shall join and remain in good standing with the Union. Persons losing their membership in the Union shall not be retained in the employ of the Company. It is agreed that the Company will not be required to discharge an employee in any instance where it would result in a violation of the Labor-Management Relations Act of 1947. Employees will not be required to join the Union until thirty (30) days after hired.

ARTICLE 12

UNION REPRESENTATION

12.1 The Company agrees to recognize a Chairman of the Local Union Committee and three (3) Committeemen

from the bargaining unit herein, which includes one (1) Committeeman for each shift and one (1) alternate Committeeman for each shift to serve as Committeeman in the absence of the regular Committeeman.

12.2 The Chairman of the Local Union Committee or his designated representative may sit in on grievance meetings.

12.3 Committeemen will not suffer any loss of time during working hours while processing or investigating any grievance.

12.4 The Company shall provide bulletin boards for the use of the Union. All notices placed on such bulletin boards shall relate solely to official Union business and shall bear the official seal of the Union. A copy of all notices to be posted on the bulletin boards shall be approved by the Company prior to posting.

12.5 No employee or Committeeman shall leave his post unless properly relieved in order to present or discuss any grievance. The officer in charge of the shift or his designee will release the Committeeman when requested for this purpose, unless he cannot be released due to an emergency situation.

ARTICLE 13

Assignment and Authorization for Check-Off of Union Dues

13.1 The Company shall, for the term of this Agreement, deduct Union dues, initiation fees and assessments uniformly levied in accordance with the Constitution and By-Laws of the Union from the first paycheck of each month of members who authorize such deduction in writing, and shall pay the same to the Secretary-Treasurer of the Union on or before the first day of the following month.

13.2 The check-off authorization to be executed and furnished to the Company by the Union and the employees shall be in the following form:

AUTHORIZATION FOR CHECK-OFF OF DUES

S.S. No. _____

To _____

Division _____

Hereinafter referred to as the Company.

Date _____

"I hereby assign to Local Union No. _____, International Union, United Plant Guard Workers of America, U.P.G.W.A., hereinafter referred to as the Union, from any wages earned or to be earned by me as your employee, the sum of $5.00 per month and initiation fees and assessments, or such amount as may hereafter be established by the Union and become due to it, as my membership dues in said Union, I authorize and direct you to deduct such amounts from my _____ each month and to remit the same to the Union.

"The assignment, authorization and direction shall become effective upon delivery, subject to the check-off provisions of the _____ Year _____ Agreement of the _____ and Local No. _____, United Plant Guard Workers of America.

"This assignment, authorization and direction shall be irrevocable for the period of one (1) year, or until the termination of the said new collective agreement between the Company and the Union, whichever occurs sooner, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year each or for the period of each succeeding applicable collective agreement between the Company and the Union, whichever shall be shorter, unless written notice is given by me to the Company and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year, or of each applicable collective agreement be-

tween the Company and the Union, whichever occurs sooner.

"This authorization is made pursuant to the provisions of Section 302(c) of the Labor Management Relations Act of 1947 and otherwise.

_____

(Signature of Employee here)

_____

(Address of Employee)

_____

(Type or print name of Employee here)

_____

(Employee's Clock No.)"

13.3 The Union accepts full responsibility for the authenticity of each Check-Off Authorization submitted to the Company, and any authorizations which are incomplete or in error shall be disregarded by the Company; authorizations which are incomplete or in error shall be returned to the Union immediately for correction. The Union agrees that upon receipt of proper proof, it will refund to the Company any deduction erroneously or illegally withheld from an employee's earnings by the Company which have been transmitted by the Company to the Union. The Union further agrees to indemnify the Company and hold it harmless against any and all claims, suits or other forms of liability which may be made against it by any party for amounts deducted from wages as herein provided.

13.4 No deductions of Union dues will be made from the wages of any employee who has executed a Check-Off form and who has been transferred to a job not covered by the Agreement, or who is not in pay status. Upon return to work within a classification covered by this Agreement, deductions from future wages shall be automatically resumed provided the employee has not revoked the assignment in accordance with this Agreement, and provided it is in accordance with other appropriate provi-

sions of this Agreement and of the National Labor Relations Act, as amended.

13.5 An employee who has executed a Check-Off form and who resigns or otherwise is terminated from the employ of the Company shall be deemed to have automatically revoked his assignment and if he is recalled or re-employed, further deductions of Union dues will be made only upon execution and receipt of a new Check-Off form.

13.6 Collection of any back dues owed at the time of starting deductions for any employee and collection of dues missed because the employee's earnings were not sufficient to cover the payment of dues for a particular pay period will be the responsibility of the Union and will not be subject of payroll deductions.

13.7 Deduction of membership dues shall be made in a flat sum provided that there is a balance in the paycheck sufficient to cover the amount after all other deductions authorized by the employee or required by law have been satisfied. In the event of termination of employment, the obligation of the Company to collect dues shall not extend beyond the pay period in which the employee's last day of work occurs.

ARTICLE 14

SENIORITY

14.1 During the first ninety (90) calendar days or sixty (60) actual days worked, whichever period is the greater, an employee shall be regarded as a probationary employee and shall have no seniority or seniority rights whatsoever.

14.2 Seniority under this Agreement shall commence with the date of employment of the individual in the bargaining unit herein.

14.3 Layoffs and recalls therefrom shall be effected on a seniority basis to the extent that employees are qualified to fill available assignments.

14.4 A seniority list, giving name and date of employment of all personnel covered under this Agreement, shall be furnished to the Union at the time of the execution of this Agreement. A list of additions and separations will be furnished to the Union monthly.

14.5 A laid-off employee shall have call-back rights for a period of one (1) year, or for the length of his or her seniority, not to exceed three (3) years, providing the employee continues to be qualified for employment. It is the responsibility of the laid-off employee to keep the Company advised by certified mail of any changes in his or her mailing address. The Company shall be considered to have fulfilled its obligation for recall under this Section by sending notice of the job opening to the employee's last-known address by certified mail. The position will not be filled on a permanent basis until after the expiration of five (5) working days after notice is given in accordance with this Section.

14.6 An employee who is discharged for cause, voluntarily resigns, or transfers out of the bargaining unit, except as provided in Paragraph 14.7 below, shall lose all seniority rights.

14.7 Any employee who accepts a supervisory position with the Company at its operation in Ontario, shall retain the seniority he had as of the date of promotion to a supervisor, but shall not accumulate additional seniority while employed in a supervisory capacity. If he later returns to the bargaining unit, he will return to a job to which his seniority entitles him. If he does not return within six (6) months, he shall lose his seniority.

14.8 Notwithstanding their position on the seniority list, the following Union representatives, in the event of layoff, shall be continued at work as long as there is sufficient work under this Agreement on the installation at which they are employed. Chairman of the Local Union, if he is within the bargaining unit, and not to exceed a total of three (3) committeemen.

14.9 Seniority shall govern choice of shift assignments and days off, a choice to be made once each twelve (12)

months. Assignments to be worked out between the Local Union Committee and the Company representative.

14.10 The Chairman of the Local Union Committee shall have his choice of shift each twelve (12) months and may, if he so requests, be scheduled on a Monday-through-Friday Schedule.

14.11 When promotions are necessary within the bargaining unit, placements will be made in accordance with seniority provided the employee has the ability and is qualified to perform the work.

14.12 Employees shall be regarded as part-time employees until they request and are assigned to work on a permanent forty-hour workweek.

14.13 In the case of layoffs the following order will be followed in the layoff: (1) probationary (2) part-timers (3) full time employees.

14.14 Separate seniority lists for both full and part-time employees giving name and date of employment of all personnel covered under this Agreement, shall be furnished to the Union upon execution of this Agreement. A list of additions and separations will be furnished to the Union monthly.

ARTICLE 15

Hours of Work

15.1 The normal workweek shall commence at 2200 hours Friday and end one-hundred sixty-eight (168) hours thereafter. A regular weekly work schedule shall consist of five (5) work days of eight (8) hours each.

15.2 The normal work day shall commence at the employee's shift starting time and extend for a period of twenty-four (24) hours.

15.3 Each employee shall be scheduled so as normally to be off two (2) consecutive days in the workweek.

15.4 Changes in hours of work or assignments to shifts may be made whenever necessary. Except in cases of

emergency or where insufficient prior notice is received from the client, five (5) days' notice shall be given in advance of all such changes. The Chairman of the Local Committee or his designee will be informed of all such changes.

15.5 All time worked in a continuous tour of duty, including overtime, shall be considered as work performed on the day within which the tour of duty is started.

15.6 Any employee scheduled by the Company to report for work on a day on which a hurricane occurs or is forecast shall receive a minimum of four (4) hours' pay if he reports for work; radio notification not to report given at least two (2) hours prior to the regular starting time of their shift shall be presumed conclusively to have been received by all employees to whom such notification is directed and any employee affected by such notice who thereafter reports shall not be entitled to pay therefor.

15.7 If work of a higher classification is required of an employee for one (1) hour or more, he shall receive the rate of pay of the higher classification for time worked in such classification. If work of a lower classification is required of an employee, his rate of pay shall not be reduced.

15.8 Time worked shall be computed to the nearest one-tenth (1/10th) of an hour.

15.9 The Company will establish three (3) main eight-hour shifts, beginning between 5:00 A.M. and 7:00 A.M., 1:00 P.M. and 3:00 P.M., and 9:00 P.M. and 11:00 P.M. Necessary special shifts may be established.

15.10 An employee assigned to a shift which begins at or after 12:00 noon, but before 5:00 P.M., shall receive a shift differential of five cents per hour. An employee assigned to a shift which begins at or after 5:00 P.M., but before 5:00 A.M., shall receive a shift differential of ten cents per hour. No shift differential shall be received by an employee assigned to a shift which begins at or after 6:00 A.M. but before 12:00 noon.

15.11 An employee may be required to rotate shifts during a workweek, in which event he shall receive for all shifts worked ten cents per hour shift differential.

15.12 The scheduling practice existing at the time of signing of this Agreement will be maintained, unless operational or personnel requirements necessitate a change, in which event the local Union representatives shall have the right to confer with management.

ARTICLE 16

Overtime Compensation

16.1 No overtime work shall be required or permitted except by direction of the proper supervisory personnel of the Company, except in cases of emergency where prior authority cannot be obtained.

16.2 Employees hereunder shall not be required to suspend work in regular hours to obsorb overtime.

16.3 Security requirements permitting, overtime work shall be distributed equitably among the employees who normally perform the work necessitating overtime.

16.4 There shall be no pyramiding of overtime and no employee shall receive more than double the straight-time rate for any hours worked.

16.5 Time paid for, but not worked due to illness, shall be considered as time worked for the purpose of computing overtime.

16.6 Any employee who reports for work as scheduled shall, unless previously advised not to report, receive a minimum of four (4) hours' work or four (4) hours' pay therefor.

16.7 An employee whose overtime working period continues into the following day shall continue to receive overtime rates for all overtime so worked. If such overtime work period shall continue so that its termination shall fall within seven and one-half (7-1/2) hours prior to his resumption of work in the succeeding work day,

he shall receive overtime rates for all time so worked during his next regular tour of duty.

16.8 Time worked in excess of eight (8) hours on any work day shall be considered overtime and shall be paid at the rate of time and one-half.

16.9 Time and one-half the regular hourly rate shall be paid for all work done at Company request on the sixth (6th) day worked in an employee's workweek.

16.10 Double the regular hourly rate shall be paid for all work done at Company request (a) on the seventh (7th) day worked in the workweek, (b) in excess of twelve (12) hours in any work day, (c) in excess of eight (8) hours on the sixth (6th) day worked in the workweek, and (d) on the seventh (7th) consecutive day worked, irrespective of whether it is the same workweek.

16.11 Premium pay for hours worked as described herein shall not be paid when such hours result from a regular shift change, or when an individual's shift is changed at his request (which request must be approved by the appropriate supervisor), any provisions herein to the contrary notwithstanding. However, any continuous work in excess of eight (8) hours on any tour of duty shall be paid for at the applicable overtime rate.

16.12 Time and one-half the employee's regular straight-time hourly rate, with a minimum of two (2) hours, shall be paid to an employee called in to work prior to his scheduled starting time, for work performed prior to such scheduled starting time. Time and one-half the employee's regular straight-time rate, with a minimum of one (1) hour, shall be paid to an employee required to work beyond his normal quitting time.

ARTICLE 17

General Wage Provisions

17.1 Effective April 29, 1967, all employees on the payroll as of that date will receive a ten cent (10¢) an hour increase in their base wage rate.

17.2 Effective April 29, 1967, bargaining unit sergeants will receive a twenty-five cent (25¢) an hour increase.

17.3 The following rates of pay will be effective on June 24, 1967, and thereafter for these employees on the payroll on the dates indicated:

GUARDS	6/24/67	4/26/68	4/26/69
Start	1.60	1.70	1.80
After 3 months of service	1.65	1.75	1.85
After 9 months of service	1.70	1.80	1.90
After 15 months of service	1.75	1.85	1.95

17.4 In the event an employee is promoted to the classification of sergeant, he will receive twenty-five cents (25¢) an hour above the highest rate of pay in effect at the time.

ARTICLE 18

HOLIDAYS

18.1 During the first year of this Agreement, all eligible full-time employees will be paid straight-time pay for eight (8) hours for each of the following holidays on which they are not required to work:

New Years Day
Memorial Day (May 30)
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

18.2 An eligible full-time employee required to work on any of the above holidays shall receive double his regular rate of pay as full compensation for such holiday worked.

18.3 Time paid for but not worked on a holiday shall be considered as time worked for the purpose of computing overtime.

18.4 An employee eligible to receive holiday pay who is scheduled to work on a holiday and who, after being assigned, refuses or fails to report for work without reasonable cause, shall not receive holiday pay.

18.5 In order to be eligible for holiday pay, a full-time employee must have been on pay status during the work-week in which the holiday falls and must have worked his last scheduled work day prior to and his next scheduled work day after such holiday, unless his absence is excused by the Company.

18.6 In the event a holiday falls during that time an employee is on accrued Sick Leave, the employee will receive holiday pay at the regular straight-time rate for the holiday, the day off not being charged to his accrued Sick Leave.

ARTICLE 19

VACATIONS

19.1 Full time employees continuously employed for one (1) year shall receive one (1) week's vacation with pay based on forty (40) hours per week at straight time.

19.2 Full time employees continuously employed for more than five (5) years shall receive two (2) weeks' vacation with pay based on forty (40) hours' work per week at straight time.

19.3 A full time employee who has completed one (1) year of service shall be paid for his accrued vacation upon termination of employment, subject to the provisions of Paragraph 4, below.

19.4 An employee who resigns without giving two (2) weeks' prior written notice or who is discharged for cause involving monetary or material loss to the Company shall not be paid for any vacation earned under this Article.

19.5 Eligible employees shall receive vacation pay in advance of their vacation, provided pay therefor is requested in writing at least two (2) weeks in advance of the pay day immediately prior to the date approved for the start of such vacation.

19.6 Consistent with efficiency and economy of operations, an employee may be permitted to split his vacation into two (2) sections.

19.7 An extra day will be added to the employee's paid vacation if a holiday covered under HOLIDAYS Paragraph 19.1 herein falls within the vacation period.

19.8 Vacations shall be based on the anniversary of the employee's date of hire. Choice of vacations shall be by seniority in the bargaining unit.

19.9 Vacation credit will accrue during any calendar month to eligible employees who are on active status, sick leave or vacation for more than one-half the calendar month.

19.10 Compensation for the vacation period shall be computed at the employee's base rate of pay (including shift differential) in effect at the time the vacation is taken.

ARTICLE 20

Leaves of Absence

20.1 Upon approval of the Company, a leave of absence of up to ninety (90) days in any twelve-month period may be granted to an employee. During such leave, the employee's seniority shall accumulate. The Company may extend such leaves of absence, but if such leave is extended by the Company, the employee will retain, but not continue to accrue, seniority.

20.2 An employee accepting gainful employment while on leave of absence, except as expressly approved by the Company in writing, automatically terminates employment with the Company and seniority hereunder.

20.3 Any employee elected or appointed for full-time Union activity necessitating a leave of absence shall be granted such leave not to exceed one (1) year and shall, at the end of such leave, be reinstated if there is sufficient work for which he or she may be eligible in accordance with seniority and ability, at the then current rate of pay. Seniority will accumulate during the period of such leave, which may be renewed upon prior written application.

20.4 Leaves of absence may be granted to employees for other Union activities, and seniority shall accumulate during such leaves. Such leaves will be granted only when requests are made by the International Union or the local Union.

20.5 Employees who, by reason of bona fide illness, require time off will be granted a leave for up to one (1) year, or the length of their seniority, but in no event to exceed three (3) years, during which time seniority shall continue to accumulate.

20.6 Time spent on leave of absence shall not apply towards vacation or sick leave credits. Employees eligible for group insurance hereunder will have the employee portion of such insurance paid by the Company only for the first thirty (30) days of such leave.

ARTICLE 21

Sick Leave

21.1 Full time employees who have completed the probationary period shall thereafter accrue one (1) day of sick leave for each month of service, cumulative to thirty (30) days.

21.2 The employees and the Union recognize their obligation to prevent unnecessary absences or any other abuses of the sick leave privilege. The Company may discipline employees who abuse the sick leave privileges.

21.3 Sick leave credit will accrue during any calendar month to eligible employees who are on active status, sick leave, or vacation for more than one-half of the calendar month.

21.4 Any full time employee absent from work due to illness shall receive sick leave pay for which he is eligible hereunder at the straight-time hourly rate for the number of hours of work scheduled.

21.5 Full time employees, during the first three (3) years of employment, shall not receive sick leave pay

for the first three (3) days of each illness, except in the case of employees hospitalized for one (1) full day or longer due to illness or injury.

ARTICLE 22

Sickness and Disability Benefits

22.1 Full time employees will continue to receive their present group insurance plan covering life, hospital, surgical benefits, providing the employee has completed or completes and signs an enrollment card in accordance with the Company's enrollment procedures. New employees will be afforded an opportunity to enroll upon completion of their probationary period.

22.2 Premiums for employees' dependents' hospital, surgical and major medical benefits will be handled through payroll deductions.

22.3 In the event of any increase necessary to continue the present level of benefits provided by the Company, the Company will either reduce the level of benefits as required to maintain the present Company cost or make the plan contributory, at the option of the Union.

22.4 For all employees sixty-five (65) and over all hospital, surgical, and medical benefits will be handled under the Federal Medicare program.

ARTICLE 23

Uniforms

23.1 The Company will continue its present policy with respect to the furnishing of uniforms and equipment.

23.2 Beginning April 29, 1967 and thereafter, each employee will receive a uniform maintenance allowance of $1.00 per week to be administered on the basis of twenty cents (20¢) per shift worked.

ARTICLE 24

GENERAL

24.1 It is not the intent of either party to this Agreement to violate any Federal, State or local laws governing the subject matter contained herein. All parties who are signatory to the terms of this Agreement agree that if any provisions contained herein are finally held or determined to be illegal or void by a court of final and competent jurisdiction, the parties shall promptly enter into negotiations concerning the affected clauses for the purpose of achieving conformity with the requirements of the applicable law.

24.2 The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter. Therefore, the Company and the Union each agree that the other shall not be obligated to bargain on any other subject during the life of this Agreement, provided, however, this paragraph shall not be construed so as to modify or supersede any other provision of this Agreement.

24.3 In the event of death in the immediate family of an employee, the employee will be granted up to three (3) days' emergency leave, with pay, not including the employee's days off, providing the employee substantiates the need for the leave. For the purpose of this paragraph, the immediate family is defined as the father, mother, sister, brother, fater-in-law, mother-in-law, spouse and children of the employee.

24.4 Supervisory employees normally will not perform the duties of employees in the bargaining unit other than in emergency situations or for purposes of instructing employees.

24.5 Employees subpoenaed for jury duty shall be compensated at their regular rate for eight (8) hours' pay for each scheduled work shift during which they served

on jury duty, less any jury duty fee received. Employees shall be required to produce satisfactory evidence that they were called for and required to serve on a jury before being entitled to jury pay. This paragraph shall not apply to probationary employees.

24.6 The re-employment and seniority status of any employees hereunder who, while in the active service of the Company, enter the armed services or, during wartime enter the Merchant Marine of the United States, shall be governed by the provisions of the Selective Service and Training Act of 1958, as amended, or other applicable law.

24.7 Employees covered by this Agreement shall not normally be required to perform duties other than those normally performed by employees in the bargaining unit, except in cases of emergency.

24.8 The Company recognizes the need for safe, sanitary, and healthful working conditions and will endeavor to accomplish these aims. No employee shall be discharged for refusing to work on a job not made reasonably safe or sanitary for him, or that might unduly endanger his health.

24.9 Employees shall be granted relief from time to time, as necessary.

24.10 The Company recognizes that exposure to inclement weather is not desirable, and will endeavor to accomplish adequate relief and to prevent excessive exposure, including proper protection for individuals exposed to such conditions.

24.11 No employee shall be required to transfer out of the bargaining unit.

ARTICLE 25

DURATION

25.1 Except where otherwise provided herein, this Agreement becomes effective on April 29, 1967, and shall continue in full force and effect until midnight, April

28, 1970, and from year to year thereafter ,unless either party gives written notice, not less than sixty (60) days, nor more than ninety (90) days, immediately prior to the expiration date, of its intention to amend, modify or terminate this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this the 29th day of April 1967.

For:	For:
International Union, United Plant Guard Workers of America	The Wackenhut Corporation
And Its Amalgamated Local No. 162.	
/s/ Ronald Gilman	/s/ William Bitten, Jr.
/s/ Elmer H. Reitzel	/s/ Arthur C. Potter
/s/ Thomas C. Ware	/s/ Russell F. Frazier
/s/ Charles A. Blankemeier	

APPENDIX "A"

It is agreed that if, at anytime during the life of this Agreement, a wage and fringe benefit determination is issued by the Department of Labor affecting employees covered by this Agreement, all parties hereto agree to comply with such determination and place such determination into effect immediately.

EXHIBIT No. 4

[UPGWA Emblem]

INTERNATIONAL UNION
UNITED PLANT GUARD WORKERS OF AMERICA
International Headquarters:
14214 East Jefferson, Detroit, Michigan 48215

James C. McGahey
President

Ray C. Hilderbrandt
Secy.-Treas.

Telephone 821-1132

July 12, 1967

William J. Burns International
Detective Agency
235 East 42nd Street
New York, New York 10017

Gentlemen:

We have been informed that your Agency has been awarded a contract for guard services at the Lockheed Aircraft Service Company in Ontario, California, effective July 1, 1967.

You are hereby advised that the International Union United Plant Guard Workers of America (UPGWA) and its Amalgamated Local Union No. 162, is the exclusive bargaining representative of plant guards in an appropriate unit at that facility.

On March 8, 1967, our Union was certified by the National Labor Relations Board in Case No. 31-RC-455 as the exclusive representative of all guard employees. That Certification is presently outstanding and binding upon your Agency.

The bargaining unit is covered by a current collective bargaining agreement dated April 29, 1967, a copy of which is enclosed herewith.

Demand is hereby made that you recognize our Union as the exclusive representative of all guard employees in the appropriate unit at Lockheed Aircraft Service

Company and that you honor the collective bargaining agreement.

In the event you refuse or fail to honor this request within five (5) days of receipt thereof, appropriate legal action will be instituted.

I also request that our respective representative meet at the earliest possible opportunity for the purpose of discussing any problems resulting from your assumption of operations at Lockheed.

Very truly yours,

/s/ James C. McGahey
JAMES C. MCGAHEY
President, International Union
United Plant Guard
Workers of America

JCM:ka
opeiu 42
encl.

Registered Mail—R.R.R.

cc: Burns Inter'l. Detective Agency, Los Angeles, California, w/encl.

Lockheed Aircraft Service Company, Ontario, California, w/encl.

R. R. Mettenet, President, Local 162

Ronald Gilman

Gordon Gregory

EXHIBIT NO. 5

July 24, 1967

Mr. James C. McGahey, President
International Union, United Plant
Guard Workers of America
14214 East Jefferson
Detroit, Michigan 48215

Dear Mr. McGahey:

This will confirm receipt of your July 12, 1967 letter and enclosure which has been referred to my attention and which arrived while I was out of the office.

The matter is being reviewed but I would understand that any guards employed by our Los Angeles office at Lockheed Aircraft Service Co. in Ontario, California are members of and are represented by American Federation of Guards, Local 1, a Union with whom our Los Angeles office now has a collective bargaining agreement and has had for over a period of years. There is, accordingly, a substantial good faith doubt here that your claim is valid.

Yours very truly,

THE WILLIAM J. BURNS
INTERNATIONAL DETECTIVE
AGENCY, INC.

J. M. GERATY

JMG:ms

GENERAL COUNSEL'S EXHIBIT No. 4

Membership No. _____

APPLICATION PLEDGE FOR MEMBERSHIP
in
—LOCAL 1—
AMERICAN FEDERATION OF GUARDS
Room 218—4157 West 5th Street
Los Angeles 5, California
DUnkirk 7-3120

Please Print: Date _____ 196___

Name of Applicant _____ Telephone No. _____

Street Address _____ City _____ Zone _____

Occupation _____ Where Employed _____

Date of Birth _____ Initiation Fee $5.00

TO SUPERSEDE ANY AND ALL REPRESENTATIVE AUTHORIZATION GUARD PLEDGES:

I agree and understand that the Secretary-Business Representative or any authorized representative, of the American Federation of Guards has full authority to represent me, and in my behalf, in any matters pertaining to grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, with employers, their representatives, or any one else, pending my application for membership being accepted by this organization and during the life of my membership.

_____ /s/ Jack Foley
Signature of Applicant Signature of Organizer

UNION SHOP AUTHORIZATION

I hereby authorize the American Federation of Guards to negotiate a union shop agreement with my employer.

_____
Signature of Applicant
(void if not signed)

NO MONIES REFUNDED

GENERAL COUNSEL'S EXHIBIT NO. 6

AGREEMENT

THIS AGREEMENT made and entered into this 21st of March 1967, by and between the Los Angeles, California, Office of The William J. Burns International Detective Agency, Incorporated, at 2323 Beverly Boulevard, Los Angeles, California 90057, hereinafter referred to as the "Employer", and THE AMERICAN FEDERATION OF GUARDS, LOCAL NO. 1, at 4157 West Fifth Street, Los Angeles, California, hereinafter referred to as the "Union", witnesseth:

Section 1. Recognition. The Employer recognizes the Union as the exclusive bargaining agent for all security guards employed by the Employer in Los Angeles County, California, excluding, however, all other employees of the Employer, including office clerical employees and supervisors as defined in the National Labor Relations Act, as amended.

Section 2. Union Security. All employees of the Employer subject to the terms of this Agreement shall, on or before sixty (60) days following their initial employment or the effective date of this Agreement, whichever is later, remain and be members of the Union as a condition of their continued employment; provided, that no employee's employment shall be terminated for non-membership in the Union if the Employer has reasonable grounds for believing that membership in the Union was not available to the employee on the same terms and conditions generally applicable to other members or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership. This section for Union security shall be effective and valid only so long as it is not contrary to law or orders of the National Labor Relations Board. The Employer agrees to inform the Union in writing within ten (10) days of the first employment of any employee of such employee's name and first date of employment.

Section 3. Seniority. When laying off or rehiring employees, the Employer will give due regard to the following factors:

(1) Length of active service with the Employer;
(2) Ability to perform the work; and
(3) Physical fitness.

When all such factors, except length of active service with the Employer, are relatively equal in the Employer's opinion, length of service will govern.

In case of a reduction of forces by a client, the principle of seniority shall apply, subject, however, to the requirement that the senior man must, in the Employer's opinion, have the qualifications to perform the remaining job or jobs. Unless the senior man has such qualifications, in the Employer's opinion, men having less seniority may be retained to perform such jobs.

Section 4. Overtime Pay. Any work performed by an employee in excess of forty (40) straight time hours in any one work week shall be paid for at the rate of one and one-half (1½) times the employee's basic straight time hourly rate.

Section 14. Classification and Wage Rates.

(A) Guard job classifications and the rates of pay applicable thereto shall be as listed below. All new guard Employees shall be first assigned to the "All Guards" category. Thereafter, advancement by a guard into the Brewery or Universal category shall not be automatic but rather shall first be conditioned upon an actual assignment to a vacancy within any such classification, the decision thereafter to fill any such assignment vacancy and the selection of a particular guard for such assignment to be within the sole discretion of the Employer.

WAGE RATE SCHEDULE 1-1-67 to 12-31-68

LENGTH OF SERVICE	Effective 1-1-67	Effective 1-1-68
ALL GUARDS (except at the breweries or Universal)		
New Hires	1.40	1.60
6 months	1.43	1.63
12 months	1.48	1.68
24 months	1.58	1.78
GUARDS AT BREWERIES		
New Hires	1.45	1.65
6 months	1.50	1.70
12 months	1.55	1.75
24 months	1.65	1.85
GUARDS AT UNIVERSAL		
New Hires	2.01	2.01
6 months	2.10	2.10
12 months	2.35	2.35
24 months	2.45	2.45

(B) Guard employees on the Employer's payroll as of the effective date of this Agreement will be assigned to the pay classification determined by their length of service with the Employer but no guard employee shall have his aforesaid wage rate reduced thereby.

(C) Sergeants shall receive for their work a differential of $0.10 per hour over and above their basic straight time hourly rate; except at Universal City where Sergeants shall receive $0.25 per hour above their basic straight time hourly rate.

Section 15. It is agreed that the wage rates set forth in Section 14 above shall not apply to the Employer's guards who are assigned to the following companies if and when the Employer obtains such companies as clients:

1. Douglas Aircraft Company, Inc., Long Beach, California
2. Walt Disney Productions, Burbank, California
3. Desilu Productions, Los Angeles, California

4. Columbia Pictures, Inc., Los Angeles, California
5. Sam Goldwyn Motion Pictures Studio, Los Angeles, California
6. General Service Studios, Los Angeles, California
7. Producers Studio, Los Angeles, California
8. Metro Goldwyn Mayer Studio, Culver City, California
9. Republic City (CBS Studio Center), North Hollywood, California
10. Technicolor Corporation, Los Angeles, California
11. Metromedia, Inc. (KTTV Studio), Los Angeles, California
12. Coca Cola Bottling Company, Los Angeles, California
13. Consolidated Lumber Company, Wilmington, California
14. Sun Lumber Company, Long Beach, California
15. General Motors Corporation, South Gate, California
16. Associated Banning Company, Wilmington, California
17. Indies Terminal Corporation, Wilmington, California
18. Ocean Terminals, Inc., Wilmington, California
19. Outer Harbor Dock and Wharf, Inc., San Pedro, California
20. William Diamond and Company, Wilmington, California
21. United Fruit Company, Wilmington, California
22. Star Kist Food, Inc., Terminal Island, California

In the event that the Employer does sell its guard services to any of the above-mentioned companies, it is agreed that the Employer and the Union will negotiate wage rates for guards assigned to such companies and thereafter set forth such rates in a supplement to this agreement.

Section 16. Management.

The Employer has and will retain the exclusive right and power to manage its business, and to direct the working force, including but not limited to the right to

hire, suspend, discharge, promote, or transfer its employees for proper cause, subject to the pertinent terms of this Agreement. This statement of management rights which remain unimpaired by this Agreement is not intended to exclude others which are not mentioned herein.

Section 17. No Strike—No Lockout.

During the term of this Agreement, the Union shall not authorize, cause, engage in, sanction or assist in any work stoppage or strike against the Employer. The Employer shall not cause, permit or engage in any lockout of members of the Union. It is further agreed that the Employees covered by this Agreement will at all times pass through picket lines of other Unions and will perform their regular duties as guardians of personnel and private property, regardless of strikes, boycotts, or activities of other labor unions.

Section 18. Duration of Agreement.

This Agreement shall be in effect from January 1, 1967 and shall remain in full force and effect through and including December 31, 1968, and thereafter from year to year, unless sixty (60) days before December 31, 1968 or sixty (60) days before any subsequent anniversary date thereof either party hereto gives to the other written notice of a desire to terminate, change or modify the same.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

For the Employer

The William J. Burns International Detective Agency, Incorporated

By /s/ [Illegible]

Title: Branch Manager

For the Union

American Federation of Guards, Local No. 1

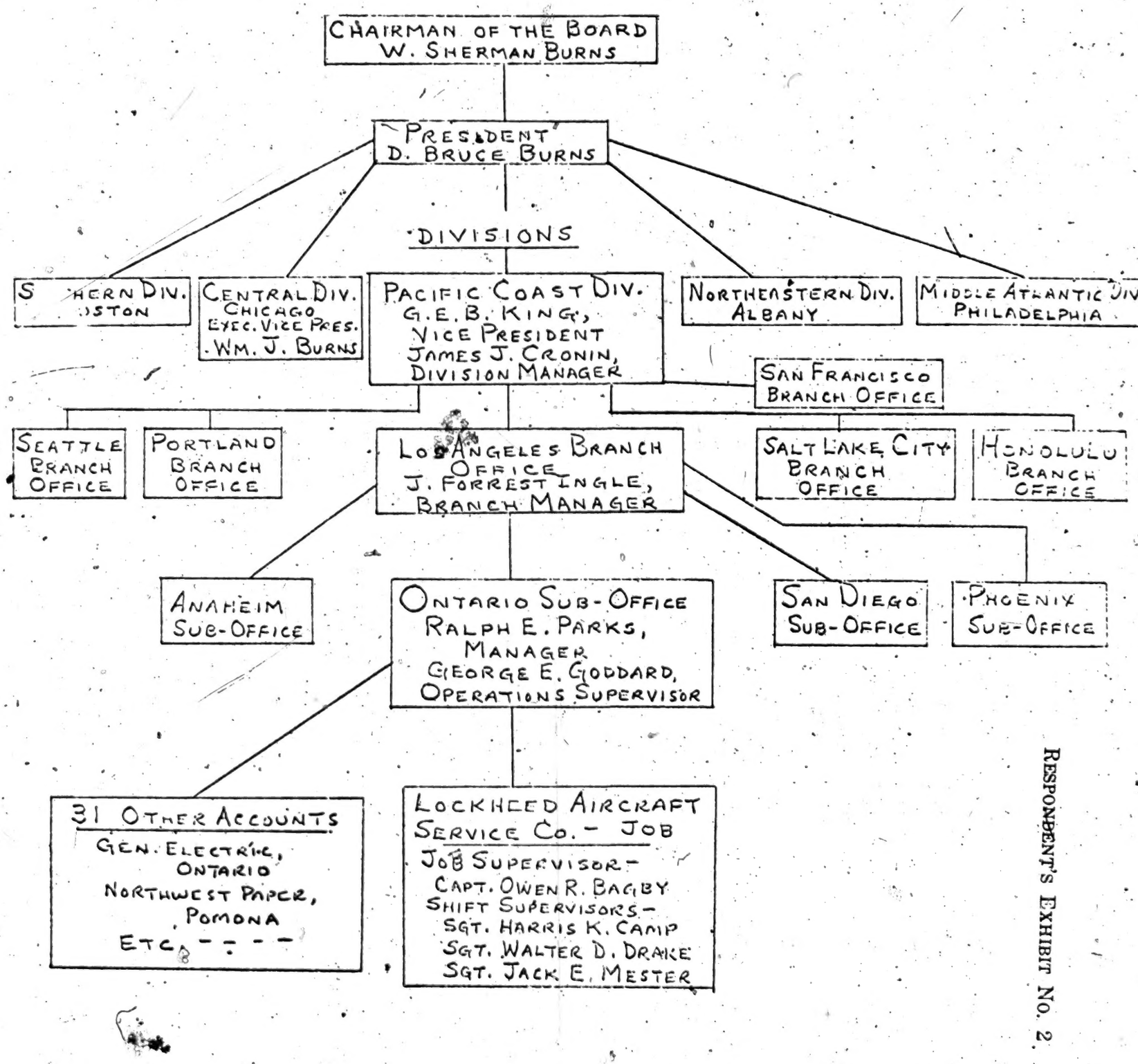
By /s/ Ronald Welk
Secretary-Treasurer

/s/ William F. Newman
Committee

/s/ Clarence A. [Illegible]
Committee

/s/ Philip N. Clarke
Committee

THE WILLIAM J. BURNS
INTERNATIONAL DETECTIVE AGENCY, INC.



RESPONDENT'S EXHIBIT NO. 2.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 401-402—September Term, 1970

(Argued March 8, 1970 Decided April 26, 1971)

Docket Nos. 34889, 35055

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162, INTERVENOR

Before:

HAYS and FEINBERG, *Circuit Judges*, and CURTIN, *District Judge.**

Petition to review and set aside, and cross-application to enforce, an order of the National Labor Relations Board finding violations of Sections 8(a)(2) and (1) of the National Labor Relations Act (29 U.S.C. §§ 158 (a)(2) and (1) (1964)) for unlawfully recognizing and assisting the American Federation of Guards, and finding violations of Sections 8(a)(5) and (1) (29 U.S.C. §§ 158(a)(5) and (1) (1964)) for failure to recognize and bargain with the United Plant Guard Workers of

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* Of the United States District Court for the Western District of New York, sitting by designation.

America and failing to honor the contract executed between that union and the Wackenhut Corporation, Burns' predecessor.

Enforcement granted in part; denied in part.

SEYMOUR SWERDLOW, Los Angeles, California (Charles G. Bakaly, Jr., Richard C. White, Kathleen Peratis, O'Melveny & Myers, Los Angeles, California, on the brief), *for Petitioner.*

NANCY SHERMAN (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, Julius Rosenbaum, Attorney, National Labor Relations Board, on the brief); *for Respondent.*

GORDON A. GREGORY, Detroit, Michigan (Gary A. Marsack, Livingston, Gregory, Van Lopik & Higle, Detroit, Michigan, on the brief), *for Intervenor.*

HAYS, *Circuit Judge:*

From 1962 until 1967 the Wackenhut Corporation provided plant protection services for the facility of the Lockheed Aircraft Service Company located at Ontario International Airport, Ontario, California. In 1967 Lockheed arranged with the William J. Burns International Detective Agency, petitioner on this appeal, to take over the plant protection duties from Wackenhut and on May 31, 1967 Lockheed notified Wackenhut that Burns would take over on July 1.

On March 8, 1967 the International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162 were certified as representatives of Wackenhut's employees working at Lockheed and on April 29, 1967 Wackenhut and the union entered into a collective bargaining agreement to be in effect from April 29, 1967 until April 28, 1970.

On July 1, 1967 Burns took over the plant protection work at Lockheed. Burns employed for this purpose 42 guards, 27 of whom had previously been employed by Wackenhut.

The United Plant Guard Workers demanded that Burns recognize the union as the exclusive representative of Burns' employees at Lockheed and honor the collective agreement which the union had negotiated with Wackenhut. Burns refused both requests and the union thereupon filed unfair labor practice charges with the Board.

The Board, affirming the Trial Examiner's decision, held that Burns had violated Sections 8(a)(2) and (1) of the National Labor Relations Act (29 U.S.C §§ 158 (a)(2) and (1) (1964)) by unlawfully recognizing and assisting the American Federation of Guards, a "rival" union: that it had violated Sections 8(a)(5) and (1) (29 U.S.C. §§ 158(a)(5) and (1) (1964)) by failing to recognize and bargain with the United Plant Guard Workers of America; and that Burns was obligated to honor the collective bargaining agreement which had been entered into between the latter union and the Wackenhut Corporation. Burns petitions for review of the Board's order except for that portion charging it with unlawful assistance and recognition of the American Federation of Guards; the Board cross petitions to enforce the entire order. We enforce the Board's order except for that part which requires the company to honor the collective agreement between Wackenhut and its union.

I.

The Board found that Burns violated Sections 8(a)(2) and (1) of the Act by unlawfully assisting and recognizing the American Federation of Guards. Although Burns has not petitioned for review of this portion of the order, it apparently seeks to avoid the consequences of the Board's action by stating that it "has elected to comply with the portion of the Board's order requiring it to cease and desist from recognizing the American Federation of Guards as representative of its guards at the Facility." The fact, however, that the em-

ployer is willing to comply does not render the cause moot; the Board may still seek and secure enforcement from the courts. *NLRB* v. *Mexia Textile Mills, Inc.*, 339 U.S. 563, 567 (1950). The Board's finding of unlawful assistance and recognition is amply supported by the record. We enforce that part of its order.

II.

The remainder of the Board's order deals with its finding that Burns unlawfully refused to recognize and bargain with the United Plant Guard Workers of America and to honor the collective bargaining agreement which that union negotiated with Burns' predecessor, Wackenhut.

Burns first contends that a bargaining unit limited only to Burns guards working in Lockheed is not appropriate and that therefore, the Board's order is not enforceable. Burns argues that the high degree of integration of its Ontario Sub-Office, which managed 30 contracts in addition to the contract at Lockheed, required a bargaining unit encompassing the entire area, particularly in view of the centralized control of labor relations that Burns claims existed there. The Board on the other hand, argues, in support of its findings, that Burns' employees serviced the same facility that was considered an appropriate unit for Wackenhut employees, that Burns' employees had a community of interest, were supervised by one man on a full-time daily basis who had hiring and firing authority, and were paid a distinctly higher wage than other Burns employees in the Los Angeles branch area (which included Ontario).

The Board has a large measure of discretion in making unit determinations. See *Packard Motor Car Co.* v. *NLRB*, 330 U.S. 485, 491 (1947); *Continental Insurance Co.* v. *NLRB*, 409 F.2d 727, 728 (2d Cir.), cert. denied, 396 U.S. 902 (1969). The centralization of final decisions on labor policy is not per se decisive of the extent of an appropriate unit where the Board has substantial justification for establishing a smaller unit. *Continental Insurance Co.* v. *NLRB*, *supra* at 729. We cannot say that the Board lacked such justification in this case.

We agree as well with the Board's finding that Burns is a successor employer to Wackenhut and as such is required to recognize the union chosen by Wackenhut's employees. See, e.g., *Tom-A-Hawk Transit, Inc.* v. *NLRB*, 419 F.2d 1025, 1026-27 (7th Cir. 1969). The determination that an employer is a successor is made on the basis of "continuity in the business operation," *NLRB* v. *Zayre Corp.*, 424 F.2d 1159, 1162 (5th Cir. 1970), that is, whether the operation is "essentially the same as that previously conducted . . . ." *S. S. Kresge Co.* v. *NLRB*, 416 F.2d 1225, 1234 (6th Cir. 1969). Has the "employing industry . . . retained its identity and continuity to a degree sufficient to make it reasonable that the successsor employer be required to recognize the incumbent union[?]" (*Tom-A-Hawk Transit, Inc.* v. *NLRB*, *supra* at 1027.) We think that it has in the instant case.

All of the important factors which the Board has used and the courts have approved are present in the instant case: "continuation of the same type of product lines, departmental organization, employee identity and job functions." *NLRB* v. *Zayre Corp.*, *supra* at 1163 (footnotes omitted). Both Burns and Wackenhut are nationwide organizations; both performed the identical services at the same facility; although Burns used its own supervisors, their functions and responsibilities were similar to those performed by their predecessors; and finally, and perhaps most significantly, Burns commenced performance of the contract with 27 former Wackenhut employees out of its total complement of 42.[1]

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[1] Although the absence of wholesale hiring of predecessor's employees does not require a finding that there has been no successorship, see *Monroe Sander Corporation* v. *Livingston*, 377 F.2d 6, 12 (2d Cir.), cert. denied, 389 U.S. 831 (1967), its presence is relevant "to show similarity of operations." *Id.* The Court in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543, 551 (1964) placed great stress on this single factor by holding that "relevant similarity and continuity of operation across the change in ownership is adequately evidenced by the wholesale transfer of Interscience employees to the Wiley plant, apparently without difficulty."

III.

From the fact that Burns was the successor of Wackenhut within the meaning of that term as applied by the Board and the courts, and was required to recognize the union chosen by Wackenhut's employees, it does not follow that Burns could be ordered by the Board to honor the collective agreement to which Wackenhut and its union were parties. In none of the previous successorship cases has the Board ever reached that result. The successor has always been held merely to have the duty of bargaining with his predecessor's union. We conclude that in ordering Burns to honor the contract executed by Wackenhut, the Board has exceeded its powers. Neither the applicable case law nor the national labor policy justifies the Board in imposing a collective agreement upon an unwilling party who had no part in the negotiation of the agreement.

The action of the Board in this case is contrary to the letter as well as the spirit of the Supreme Court's recent decision in *H. K. Porter Co., Inc.* v. *National Labor Relations Board*, 397 U.S. 99 (1970). That case held that the Board and the courts "[are] without power to compel a company or a union to agree to any substantive contractual provision of a collective bargaining agreement." *Id.* at 102. As the Court points out, the legislative history of the National Labor Relations Act and of the enactment of § 8(d) of the Act,[2] strongly supports the conclusion that "the Board acts to oversee and referee the process of collective bargaining, leaving the results of the contest to the bargaining strengths of the parties." *Id.* at 108.

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[2] Section 8(d) reads as follows:

> "For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, *but such obligation does not compel either party to agree to a proposal or require the making of a concession*. . . ." 29 U.S.C. § 158(d) (emphasis added).

> "While the parties' freedom of contract is not absolute under the Act, allowing the Board to compel agreement when the parties themselves are unable to agree would violate the fundamental premise on which the Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract." *Id.* at 108.

The Board professes to find authority for its order to Burns to honor the Wackenhut contract in *John Wiley & Sons* v. *Livingston*, 376 U.S. 543 (1964).

The Board does not claim that *Wiley* stands directly for the proposition that all of a predecessor's contractual obligations can be imposed on an unwilling successor. The holding of *Wiley* is merely that "in appropriate circumstances, present here, the successor employer may be required to arbitrate with the union under the agreement." *Id.* at 548. Indeed, the *Wiley* case arose in the context of an action to compel arbitration under § 301 of the Labor Management Relations Act. (29 U.S.C. § 185 (1964).)

The Board contends, however, that the policy considerations upon which *Wiley* is based support its action in this case. But the policy behind the decision in *Wiley* was founded upon the Court's recognition of "the central role of arbitration in effectuating national labor policy." *Id.* at 549.[3] The Court's determination is only that "the impressive policy considerations favoring arbitration are

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[3] The Court repeatedly emphasized this basis for its decision and the limited effect of its holding:

> "Here, the question is whether Wiley, which did not itself sign the collective bargaining agreement on which the Union's claim to arbitration depends, is bound at all *by the agreement's arbitration provision.*
>
> . . .
>
> . . . It would derogate from *'the federal policy of settling labor disputes by arbitration,'* . . . if a change in the corporate structure and ownership of a business enterprise had the automatic consequence of *removing a duty to arbitrate* previously established." *John Wiley & Sons* v. *Livingston*, 376 U.S. 543, 547, 549 (1964) (citation omitted) (emphasis added).

not wholly overborne by the fact that Wiley did not sign the contract being construed." *Id.* at 550 (footnote omitted).

Although it is true that a rule such as that promulgated by the Board would put future potential successor employers on notice that existing contracts would be obligatory on them and thus provide them with a choice of action, the rule would bind the union to a contract with a successor employer without giving it any opportunity for choice. This could sometimes result in serious inequities. For example, where a union made substantial concessions to a failing employer in order to keep him in business and then discovered that the successor was a strong, financially viable organization, it would have no chance to bargain anew. The Board's holding that it will consider "unusual circumstances" (see, e.g., *Emerald Maintenance, Inc.*, 188 N.L.R.B. No. 139 (1971) where the Board, citing "unusual circumstances," refused to apply the rule it had earlier laid down in *Burns*) is no answer since it merely arrogates to the Board the additional power to pick and choose among the contractual provisions it will impose on non-contracting parties.

We refuse enforcement to that portion of the Board's order that requires Burns to honor the terms of the collective agreement between the union and Wackenhut.

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 34889, 35055

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA AND ITS AMALGAMATED LOCAL UNION NO. 162, INTERVENOR

JUDGMENT

Before: Hays, and Feinberg, Circuit Judges, and Curtin, District Judge.*

THIS CAUSE came on to be heard upon a petition to review, and on a cross-application for enforcement of, an order of the National Labor Relations Board dated May 7, 1970, against the above-named Petitioner, its officers, agents, successors and assigns. The Court heard argument of respective counsel on March 8, 1971, and has considered the briefs and transcript of record filed in this cause. On April 26, 1971, the Court being fully advised in the premises handed down its opinion granting in part and denying in part enforcement of the Board's said order. In conformity therewith, it is hereby

ORDERED AND ADJUDGED by the Court that The William J. Burns International Detective Agency, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively, upon request, with International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162

* Of the United States District Court for the Western District of New York, sitting by designation.

(the "Union") as the exclusive bargaining representative of all of its employees in the following collective bargaining unit: all full-time and regular part-time employees performing plant protection services, as determined by Section 9(b)(3) of the National Labor Relations Act, as amended, at Lockheed, Ontario International Airport; excluding office clerical employees, supervisors, and all other employees as defined in the Act.

(b) Assisting or recognizing the American Federation of Guards (the "AFG") as the representative of its employees in the above-described unit for the purposes of collective bargaining, unless and until said labor organization shall have been certified as the exclusive bargaining representative of said employees in the above-described unit.

(c) Interfering with representation of its employees through labor organizations of their own choosing.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to join or assist the Union.

2. Take the following affirmative action:

(a) Withdraw and withhold recognition from AFG as representative of its employees in the above-described unit.

(b) Bargain collectively, upon request, with the Union, with respect to its employees in the above-described unit, and, if any understanding is reached, embody such understanding in a signed agreement.

(c) Post at its Lockheed, Ontario, California, operations, copies of the notice attached hereto as "Appendix." Copies of said notice, to be furnished by the Regional Director for Region 31 (Los Angeles, California) shall, after being signed by Petitioner's authorized representative, be posted by it immediately upon receipt thereof and be maintained by it for a period of 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such notices are not altered, defaced or covered by any other material.

(d) Notify said Regional Director, in writing, within 10 days from the date of this Judgment what steps Petitioner has taken to comply herewith.

PAUL R. HAYS
Judge, United States Court of Appeals for the Second Circuit

WILFRED FEINBERG
Judge, United States Court of Appeals for the Second Circuit

Filed: May 18, 1971

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A Judgment of the United States Court of Appeals enforcing in part an order of the

NATIONAL LABOR RELATIONS BOARD

and in order to effectuate the policies of the

NATIONAL LABOR RELATIONS ACT
(as amended)

we hereby notify our employees that:

WE WILL NOT refuse to bargain collectively, upon request, with International Union, United Plant Guard Workers of America and its Amalgamated Local Union No. 162 as the exclusive bargaining representative of our employees in the following appropriate unit:

> All our full-time and regular part-time employees performing plant protection duties as determined by Section 9(b)(3) of the National Labor Relations Act, as Lockheed, Ontario International Airport; excluding office clerical employees, supervisors, and all other employees as defined in the Act.

WE WILL NOT assist or recognize American Federation of Guards, Local 1, as the representative of our employees for the purposes of collective bargaining, unless and until it shall have been certified as the exclusive bargaining representative of our employees in the above unit.

WE WILL NOT interfere with representation of our employees through labor organizations of their own choosing.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights to join or assist the

United Plant Guard Workers or otherwise engage in activities protected by the Act.

WE WILL withdraw and withhold recognition from American Federation of Guards as representative of employees in the above unit until or unless it is certified as bargaining representative of our employees in said unit.

WE WILL bargain, upon request, with United Plant Guard Workers with respect to employees in the above unit, and, if any understanding is reached, embody such understanding in a signed agreement.

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC.
(Employer)

Dated ..... By .....

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, Federal Bldg., Room 12100, 11000 Wilshire Blvd., Los Angeles, California, 90024, Telephone No. 824-7351.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 34,889, 35,055

THE WILLIAM J. BURNS INTERNATIONAL DETECTIVE AGENCY, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

etc.

It is hereby ordered that the motion made by counsel for the respondent, National Labor Relations Board, to vacate the judgment filed herein on May 18, 1971 and file in lieu thereof the Board's second proposed judgment, be and it hereby is granted to the extent of adding the following paragraph to the judgment of May 18, 1971, denominated as paragraph 2(c):

> (c) Make whole all persons employed in the above described unit for any loss of pay or other benefits they may have suffered as a result of reimbursement to be made in accordance with *F. W. Woolworth Co.*, 90 NLRB 289, and *Isis Plumbing & Heating Co.*, 138 NLRB 716.

Paragraphs denominated 2(c) and 2(d) in the original judgment filed May 18, 1971 are now denominated 2(d) and 2(e), respectively. By this action we reverse our order of June 30, 1971, which denied the same motion made by the respondent, National Labor Relations Board.

/s/ Paul R. Hays
(PAUL R. HAYS)

/s/ Wilfred Feinberg
(WILFRED FEINBERG)
U.S.C.J.J.

/s/ John T. Curtin
(JOHN T. CURTIN)
U.S.D.J.

Dated July 12, 1971

SUPREME COURT OF THE UNITED STATES

No. 71-123

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

BURNS INTERNATIONAL SECURITY SERVICES, INC., ET AL.

ORDER ALLOWING CERTIORARI. Filed October 12, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is consolidated with No. 71-198 and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

BURNS INTERNATIONAL SECURITY SERVICES, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ORDER ALLOWING CERTIORARI. Filed October 12, 1971

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted, limited to Question 2 presented by the petition which reads as follows:

"2. In such a proceeding, may a sub-contractor who is awarded a contract to provide services at a facility be held to be a successor of the previous sub-contractor and required to bargain with the union representing the previous sub-contractor's employees, where: (a) there is a total absence of dealings between the two sub-contractors; (a) there is a total absence of dealings between the two sub-contractors; (b) the previous sub-contractor's performance at the facility constitutes a small portion of its total business, the balance of which was not affected by the change of sub-contractors; (c) the performance of the contract is integrated into the new sub-contractor's previously existing business; (d) there is a change in supervision at the facility by the new sub-contractor; and (e) within six months after the awarding of the contract the previous sub-contractor's employees constitute less than a majority of employees employed at the facility?"

The case is consolidated with No. 71-123 and a total of one hour is allotted for oral argument.

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